



STATE, LOCAL AND TRIBAL PROGRAMS (SLTP)

HANDBOOK

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EEOC

Vision-Respectful and inclusive workplaces with equal employment opportunity for all.

Mission-prevent and remedy unlawful employment discrimination and advance equal opportunity for all in the workplace.

SLTP Mission-Develop, enhance and maintain rich partnerships with state, local and tribal partners to prevent and remedy unlawful employment discrimination and advance equal opportunity in the workplace through quality enforcement, outreach, education, and technical assistance as well as responsible fiscal management.



SECTION 1 – INTRODUCTION AND HISTORICAL PERSPECTIVE

(Revised August 2022)

A. Introduction: The State, Local and Tribal Handbook (Handbook) reflects the Equal Employment Opportunity EEOC's (EEOC) approach to partnerships with state and local Fair Employment Practices Agencies (FEPAs) and where applicable, Tribal Employment Rights Offices (TEROs). This Handbook serves as a resource for EEOC District Directors, State, Local and Tribal Coordinators/Program Managers, District Resource Managers and others in field offices who work in this program area.

It is also provided as a reference to FEPA and TERO Directors and their staff regarding their roles and responsibilities, processes and procedures governing the EEOC State, Local and Tribal Programs (SLTP). This Handbook is for general guidance and does not establish EEOC policy. In instances where the EEOC adopts and promulgates policies that conflict with any guidance offered herein, such policies will supersede information provided in this Handbook. References to EEOC guidance and policies are contained in this Handbook and should be referred to where noted.

Part One of this Handbook focuses on the EEOC's work/relationship with FEPAs.
Part Two of this Handbook focuses on the EEOC's work/relationship with TEROs.
Appendices and attachments for both parts are at the end of the Handbook.

For history, process and procedures related to the TEROs, see Section VIII of this Handbook.

B. History of the EEOC/FEPA Deferral and Funding Relationship: The EEOC's relationship with state and local FEPAs has its origins in Title VII of the Civil Rights Act of 1964, as amended. Section 706(c) of Title VII provides that where the unlawful employment practice is alleged to have occurred in a State or locality which has a law prohibiting the practice and where an agency is authorized to enforce that law, "no charge may be filed [with the EEOC] by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated." This is often referred to as a 60-day deferral period. However, the EEOC and FEPAs can, and frequently do, enter into worksharing agreements by which FEPAs choose to waive the 60-day deferral period with respect to certain categories of charges. *See* 42 U.S.C. § 2000e-8(b); *EEOC v. Comm. Off. Prods. Co.*, 486 U.S. 107, 117-18 (1988) (approving of such worksharing agreements as a means to 'promote time economy and the expeditious handling of cases'). The EEOC's contractual relationship with the FEPAs, based on §709 (b) of Title VII further permits the EEOC to "rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title."

In addition, §706 (b) requires that in making reasonable cause determinations, the EEOC "shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law."

C. Deferral: The EEOC's charge deferral relationship with FEPAs has evolved throughout the years. Since the enactment of Title VII, the deferral provision has presented several questions of interpretation.

In 1966, due to initial uncertainty as to whether a charging party had to file a charge with a state or local agency before the individual could file with the EEOC, we promulgated rules that established a mechanism identifying for Charging Party the appropriate state or local agency. The EEOC also forwarded the federal charge to that state or local agency. In 1968, the deferral rules were amended to allow the EEOC to automatically assert jurisdiction at the end of the deferral period unless Charging Party specifically directed otherwise. At the same time, complex provisions on filing dates that caused many complainants to lose federal rights were eliminated. The U.S. Supreme Court upheld the validity of the EEOC's automatic filing procedure after the 60-day deferral period in Love v. Pullman, 404 U.S. 522 (1972).

Congress amended Title VII through the Equal Employment Opportunity Act of 1972, to add the requirement that the EEOC, in making reasonable cause determinations, give substantial weight to the final findings and orders of FEPAs. Prior to this statutory requirement, there was a lack of uniformity in the use that EEOC district offices made of state or local investigations or conclusions when they assumed jurisdiction after 60 days. In 1975, following the establishment of the substantial weight requirement, the EEOC revised its regulations to require that agencies be designated for deferral and that designated agencies be able to enforce state law in the same manner as federal law and provide comparable remedies.

A subsequent decision in White v. Dallas Independent School District, 581 F.2d 556 (5th Cir. 1978) struck down the requirement that designation, and thus deferral, be based on availability of relief equivalent to federal relief. The court held that §706 of Title VII requires deferral wherever there is a law prohibiting discrimination and a state or local mechanism charged with addressing the violation, regardless of what kind of relief it can provide. In response, in 1980, the EEOC amended its regulations to comply with White by deleting the requirement that a designated FEPA effectively enforce state or local law in a manner comparable to federal law and provide comparable relief. While the regulations continue to request certain information regarding state or local law for agency designation, they specify that the EEOC defers charges to any qualified state or local agency or authority even if not designated. The EEOC's regulations also specify that the EEOC may, at its discretion, defer only to a state agency or the FEPA that would best serve federal enforcement purposes.

A second Supreme Court decision, Mohasco Corp. v. Silver, 447 U.S. 807 (1980) clarified how federal charge-filing deadlines interact with the 60-day deferral period described in Section 706(c) of Title VII. The Court found untimely, a charge that was filed with the EEOC on the 291st day after the act of discrimination. Although this charge was filed within the 300-day deadline for filing a federal charge, the Court held that the charge could not be considered to have been filed with the EEOC until after expiration of the 60-day deferral period, which placed the charge filing date at 351 days and rendered it untimely. Today, in order to avoid a finding that a federal charge is untimely under Mohasco, the worksharing agreements with FEPAs provide that the EEOC will initially process charges that are received by FEPAs 240 days or more after the date of the alleged discrimination.

D. Funding Fair Employment Practice Agencies (FEPAs): As with deferral, the EEOC's funding relationship with the FEPAs has evolved over time. The relationship began with a small research contract involving 11 FEPAs in 1966 for \$165,000 with Wayne State University. The 11 FEPAs served as subcontractors to research patterns of discrimination in employment in several industries and to assess FEPA's capability to eliminate these patterns of discrimination. In 1967 and 1968, in response to the findings of the research contract, the EEOC State and Local Program¹ focused on job development for minorities, resulting in approximately 10,000 job placements. However, because widespread patterns of discrimination remained, the focus of the SLTP shifted for the next several years to improving FEPA's law enforcement capabilities.

This came at a time when state and local agencies were attempting to expand their enforcement activities, such as their initiation of investigations without specific charging parties, the use of subpoenas and "cease and desist" authority, and adoption of federal remedial standards. These measures were met with resistance. The EEOC responded by funding legal support projects to help FEPAs cope with these challenges and by funding a clinical program to train law students in Title VII law and develop curriculum materials. In addition, the EEOC funded pilot projects at several FEPAs and a research contract with the New Jersey Division on Civil Rights to develop expedited case processing procedures, particularly in discharge cases. Studies of discriminatory industries and certain employment processes were also funded.

After the 1972 amendments to Title VII that required substantial weight be given to FEPA determinations, significant effort was devoted to developing guidance for FEPAs on how to process deferred charges and for the EEOC district offices on measuring the quality and quantity of FEPA charge processing. At the same time, SLTP funding shifted to a focus on charge processing contracts to increase the level of FEPA processing.

In 1978, responding to concerns expressed by civil rights groups and Congressional oversight committees about inconsistency in its relationships with FEPAs, the EEOC created its first FEPA Task Force, made up of FEPA representatives and EEOC field and headquarters staff. The EEOC also convened the first annual EEOC-FEPA Conference that year to solicit input from the FEPAs on improving the cooperative relationship. The Task Force recommendations gave priority to regularizing the funding relationship, including establishment of eligibility criteria, a funding formula based on the number of charge resolutions and a per-charge payment, charge processing standards, Worksharing Agreements between FEPAs and district offices, and a quality certification system to minimize the number of case-by-case substantial weight reviews. The EEOC's response to the Task Force recommendations was the establishment of many program features and procedures that remain in place.

Funding Principles were developed and implemented by the EEOC for the first time in FY 1979. Termed Contracting Principles since 1993 to more properly reflect the financial responsibilities of the contract, this document sets eligibility criteria that a state or local agency must meet to receive a contract and operational requirements for continuing to receive yearly contracts and contract credit for charges resolved. Also, in response to the Task Force recommendations, a standardized charge reporting system for FEPAs and EEOC field offices was developed, and

¹ The EEOC's State and Local Program was renamed in 2019 to State, Local and Tribal Programs (SLTP).

SLTP units in EEOC field offices were established with staffing allocated based on the number of FEPAs in the office's jurisdiction and the number of FEPA charges to be reviewed. In 1981, regulations establishing the certification system, which identifies FEPAs meeting certain quality standards, were issued. The following year, the Contracting Principles were amended to allow FEPAs to process age discrimination charges. In 1986, the computerized Charge Data System (CDS) was established with the installation of computers by the EEOC at state and local FEPAs under contract. In February 2003, a newer computerized data tracking apparatus was launched to replace CDS. The Integrated Mission System (IMS) consolidated and replaced several separate EEOC database systems. IMS provided an integrated database application to support intake, mediation, investigation, state and local contract processing, outreach, and litigation. It also tracked inquiries electronically, provided a mechanism to assist individuals seeking EEOC services, and provided uniformity in tracking inquiries for workload evaluation. In January 2022, IMS was replaced with a new, more modern and flexible case management system, the Agency Records Center (ARC).

The Contracting Principles have been amended from time to time to reflect changing priorities in case processing. In FY 2022, revised Contracting Principles were distributed to relevant EEOC and FEPA staff.

SECTION II – EEOC/FEPA ROLES AND RESPONSIBILITIES

(revised August 2022)

A. Overview: This Section explains the roles and responsibilities of key participants involved in the effective management of SLTP activities, including the day to day operations of establishing and maintaining the EEOC/FEPA relationship and administration of the operational and financial aspects of the Program. This section sets out the distinct roles and responsibilities for each of the participants relative to the administration of contracts, development and negotiating of work-sharing agreements (WSA), vouchering for payments and other attendant portions of the EEOC/FEPA partnership such as outreach and education.

B. Headquarters State, Local and Tribal Programs (HQ SLTP) Director and Staff: The director of SLTP, with the assistance of a deputy director and staff analysts, sets national program policies and procedures, monitors program performance on the national level and provides technical support and guidance to the EEOC field offices, FEPAs and TEROs. The Director of SLTP develops the annual program budget requirements for presentation and approval by the EEOC's Commission. HQ SLTP also monitors the status of individual districts' achievement toward national goals generally connected to the agency's Strategic Plan, White House initiatives and Chair priorities. HQ SLTP ensures all federal contracting requirements are met relative to certification of contracting officer representatives in field offices and federal contractor requirements/registrations relative to those with whom EEOC SLTP contracts. As the steward over the agency's second largest budget, HQ SLTP works closely with field staff and other HQ offices, as appropriate, to ensure responsible fiscal management. HQ SLTP is part of the Office of Field Programs.

C. EEOC District Director: The EEOC district director is responsible for the overall management of SLTP functions within their district. This responsibility includes, but is not limited to, negotiating contracts with FEPAs, TEROs and other relevant partners, as applicable, as well as WSAs with FEPAs. They also collaborate with HQ SLTP and/or their local partners to determine training needs of EEOC staff, the FEPAs and TEROs. The district directors formulate programs to effectuate improvements in the contracting and performance of their local partners as appropriate and they ensure EEOC provides technical and general program guidance. Overall, relative to their local FEPA and TERO partners, district directors are responsible for developing, maintaining and enhancing meaningful and comprehensive FEPA and TERO relationships; and, administering all financial aspects of the program. The EEOC district director serves as the contract monitor on all contracts between the EEOC and the FEPAs and TEROs within their jurisdiction with general responsibility for managing the contract to ensure adherence to the terms contained therein.

Specifically, relative to the FEPA contracts, the district director is responsible for the following actions:

- a. Recommending the issuance and modification of charge processing contracts and contract levels. This may be accomplished by an on-going review of FEPA accomplishments.
- b. Providing local program and management assistance to FEPAs when requested by a state of local agency or in response to problems identified as part of the district's review of a FEPA's program accomplishments or lack of same.

- c. Monitoring contract production and rejection rates. This should be reviewed in conjunction with resolution reports submitted by FEPAs and reviews conducted by the district office.
- d. Conducting negotiations of WSAs. While minimally an annual undertaking, an on-going dialogue with FEPA Directors will minimize the extent of disagreement during formal negotiating sessions.
- e. Managing the collaborative relationship. This is usually accomplished by maintaining open lines of communication and addressing matters before the potential for dispute arises.
- f. Working with FEPAs on their submissions for payment and authorizing such, as appropriate.
- g. Reviewing and approving Requests for Information (RIF) completed by FEPAs.

The district director has the authority to delegate the day-to-day review and consultation on the status of contracts to their local State, Local and Tribal Programs Coordinator/Manager (SLTPC/M) and other assigned local SLTP staff members. The district director ensures that all SLTPC/Ms acquire and maintain at least a COR 1 certification.

D. FEPA Director: Among the various responsibilities of the FEPA director with respect to the FEPA's relationship with the EEOC is the development of a WSA with the EEOC district director or their representative. The FEPA director should designate staff to work with the EEOC district office to affect the smooth flow of work and act as a conduit for the resolution of problems and the free flow of information between agencies. FEPAs are responsible for meeting the terms of their contracts relative to quality and quantity of charge resolutions. The staff of the FEPA is responsible for the timely input of data into the EEOC's case management system (currently the Agency Records Center-ARC), the timely reconciliation of the data, the reconciliation of production data and for the timely submission of vouchers for contract payment.

E. EEOC State, Local and Tribal Programs Coordinator/Manager (SLTPC/M): The district director may delegate to their local SLTPC/M functions and authority required to ensure that the terms of the contracts and WSAs within their jurisdiction are met, and charges are properly deferred and/or referred, as appropriate. As part of their delegated responsibility, the SLTPC/Ms are responsible for communicating with the FEPAs regarding investigations and case processing. The SLTPC/M is responsible for ensuring that charges are processed in compliance with the standards set by the EEOC, incorporating current policy, practices, and applicable federal laws, through substantial weight reviews (SWRs), education and training, and providing technical guidance regarding problems as they arise. The SLTPC/M serves as the point of contact for the FEPAs (as well as the charging parties and the public) and resolves questions of jurisdiction with respect to dual-filed charges and other inquiries for FEPA staff.

The SLTPC/M must maintain such records as will facilitate the review of FEPAs, as required, and assist HQ SLTP, in its reviews of certified agencies on a three-year cycle (29 C.F.R § 1601.78). Records must be maintained according to the file retention guidance. The SLTPC/M is also responsible for the analysis, evaluation and interpretation of charges processed by FEPAs to assess trends and/or patterns of discrimination. The information may form the bases for reports required by the district director and/or headquarters staff in its analysis of current trends, or for any other reason the district director may require.

The SLTPC/M is responsible for working with the FEPA regarding examination of vouchers by providing the necessary contract information for payment. The SLTPC/M will also aid and answer questions when necessary.

The SLTPC/M also coordinates with the district resource manager (DRM) on issues regarding preparation of receivers, FEPA payments, and unliquidated obligations in a timely manner.

Recognizing that the EEOC district directors have the discretion to assign SLTP functions to staff other than a designated SLTPC/M, the SLTPC/M is responsible for handling routine communications between his or her EEOC district director and the various FEPAs under contract with the agency residing in a particular district relating to investigations and case processing. The SLTPC/M must review investigations conducted, settlements and conciliations negotiated, charges closed administratively or those closed through mediation, to ensure they comport with the standards and policies established by the EEOC, and applicable federal laws.

The SLTPC/M is responsible for facilitating and/or delivering substantive training to FEPA partners' investigative staff, usually in coordination with the district's outreach and education coordinator (OEC). Similarly, SLTPC/Ms are expected to serve, as requested and appropriate, as members of headquarters workgroups, task forces, etc. to assist in the continual advancement of the agency's mission as it relates to the work of the FEPAs (and TEROs, as applicable).

The SLTPC/M usually functions as the representative of the district director in negotiating contracts and WSAs with FEPAs. The SLTPC/M has an ongoing responsibility for monitoring adherence to the principles set forth in the WSA and the contract.

Following are the duties of the SLTPC/M as it relates to administration of contracts between the EEOC and the FEPAs:

- a. At the request of the EEOC district director, assists with negotiations and monitoring of contracts and WSAs between the respective agencies.
- b. Reviews and ensures that cases have been investigated in accordance with acceptable investigative techniques and were settled in accordance with EEOC standards and federal laws. When reviewing cases under the requirements of SWR requirements, certifies that the jurisdiction and substantive elements are met for each file reviewed.
- c. Determines when cases are remanded to FEPAs for additional information or supplemental investigation and recommends type(s) of supplemental investigation required. The standards of review are applied to each case and a narrative in support of cases remanded or rejected is required.
- d. Tracks and monitors contracts to ensure that terms of the contracts are being met, and those cases with final actions are being submitted quarterly as required by contract and WSA. This requires review of both automated reporting by FEPAs and submission of resolutions listing as received. Deficiencies are noted, and discussions held with FEPA liaison(s) to ensure corrections are made.
- e. Reviews contract production and rejection rates on an on-going basis to ensure that at any point the district director is aware of the status of each contract in the district.

- f. Prepares quarterly reports to assist the district director in making recommendations regarding the upward or downward modification of the contract. Reports will reflect the status of each FEPA and accomplishments toward meeting the terms of the contract.
- g. Alerts HQ SLTP if there is a substantial lack in FEPA contract performance prior to actual downward modification requests, with the support of the district director.
- h. Reviews FEPA ARC data input to ensure that requirements for data entry and data integrity are being met. Work with FEPA staff and agency IT Specialists to ensure timely and accurate input of data.
- i. Ensures that vouchers are timely and correctly submitted to DOI for processing and payment.
- j. Informs DRM of FEPA production for preparation of receivers.
- k. Reconciles all reports relating to contract administration and submits them to the district director or their designee.
- l. Provides training to FEPA staff as needed and consults with FEPA director to determine staff training needs.
- m. Resolves problems encountered with FEPAs and consults with HQ SLTP as needed. Maintains liaison relationship with appropriate headquarters staff to ensure ease of access to needed information.
- n. Provides information to district's OEC reflecting EEOC/FEPA participation in joint outreach event or other outreach related activities involving FEPAs.
- o. Participates in joint FEPA/EEOC outreach activities. Conducts a quarterly conference with FEPAs in region to discuss common issues, plan outreach activities and training needs.
- p. Responds to inquiries from Charging Parties, Respondents and their representatives. Explains procedures and the substantial weight review process in response to congressional inquiries.

F. District Resource Manager (DRM): As the primary point of contact on all financial matters for the district, the DRM works in coordination with the SLTPC/M on financial management issues relating to the FEPA contracts. The SLTPC/M, depending on policies and processes established by the district director or HQ SLTP, will keep the DRM apprised regarding all financial matters impacting execution of the FEPA contracts. This includes establishing an efficient process for ensuring that the DRM is timely notified when the SLTPC/M has accepted charge resolutions from a FEPA so that the DRM is able to prepare and submit a receiver covering the accepted charge resolutions. The DRM, in coordination with the SLTPC/M, promptly processes and reconciles all transactions with appropriate, audit-ready, documentation throughout the fiscal year, carefully ensuring all authorized receipts are appropriately entered into the agency's financial system at the end of the fiscal year.

The DRM is also responsible for timely obligation of funds received from HQ SLTP for the purpose of joint EEOC/FEPA and TERO activities. In coordination with the district's SLTPC/M, the DRM has primary responsibility for efficient execution of required financial documents during the end of year close out process as it relates to FEPA Contracts.

G. File Disclosure Responsibilities

The Office of Legal Counsel (OLC) has indicated that FEPA records are not EEOC records. This is so even though the EEOC may have the FEPA records. When the EEOC receives file

disclosure requests under Section 83 of the Compliance Manual or under FOIA, EEOC should refer the requestor to the FEPA instead of releasing FEPA documents to requestors. Just as the EEOC would not want the FEPA to release EEOC created/controlled documents to third party requestors, the reverse should also not happen. FEPAs should be allowed to decide whether to release their own records even if the EEOC has a copy of such records. They are not the EEOC's records to release.

SECTION III – CONTRACT ADMINISTRATION

(Revised August 2022)

A. Overview: While it is imperative that all parties to the contract understand its basic parameters, contracting is the financial management feature of work-sharing between the EEOC and the FEPAs. As such, the deliverables under the contracts are final actions on dual-filed charges and must meet the federal standards established by the EEOC and delineated in the contract.

B. Key Roles in Contract Administration: In the financial arena, the EEOC district director serves as the contract administrator. This entails managing the contract for adherence to the terms contained therein. See Section II.C. of this Handbook for the specific responsibilities of district directors related to the overall administration of contracts. In addition, the SLTPC/M has critical duties associated with the contracting administration as well. See Section II.E of this Handbook for the enumeration of SLTPC/M responsibilities.

C. Contracting Principles: The Contracting Principles delineate the working relationship between the EEOC and FEPAs. The document sets out the standards which FEPAs must meet to be eligible for charge processing contracts and details certain operational requirements for a continued contractual relationship with the EEOC.

Contracting Principles were developed by HQ SLTP after input from and consultation with representatives of the FEPAs and EEOC district directors. [See Appendix A - Contracting Principles]

D. Requests for Information/Eligibility Criteria: The first step in developing a contractual relationship between the EEOC and a FEPA is the requirement that the FEPA respond to a Request for Information (RFI). The HQ SLTP will send out the RFIs annually year and provide district directors with projected contract levels based on individual FEPAs' performance analyses. The district director, or their representative, will use this estimate as a starting point for discussion with the FEPA. The EEOC uses the RFI to collect information regarding each FEPA's ability to produce the expected workload. Staff in SLTP will review the RFI to ensure consistency, accuracy and completeness and that the FEPA has met all basic contract requirements. [See Appendix B-Request for Information]

Following negotiations between the FEPA and the EEOC district office, the district director is responsible for submitting their recommendation to HQ SLTP regarding the contract level for a given fiscal year and validating the FEPA's eligibility for a contract. The district director is responsible for ensuring that the RFI is submitted within the prescribed timeframe and the FEPA has met the eligibility criteria listed below.

1. Be a designated agency as defined in 29 C.F.R. § 1601.70.
2. Be one of the following:
 - a. A recipient of a contract in the preceding year; or
 - b. A state or local FEPA authorized to enforce a statute prohibiting employment discrimination in the public and/or private sector.

3. A Local FEPA will be eligible for an ADEA charge resolution component if there is not a state FEPA authorized to enforce an age discrimination statute and/or it received an age charge resolution contract in the prior fiscal year. If these conditions are not met, the local FEPA must obtain written concurrence from the primary state FEPA before requesting an ADEA charge resolution component.
4. Provide a copy of the enabling statute, ordinance, procedural regulations, and policy statements every 3 years with contract application materials.
5. Enter into a WSA with the EEOC.
6. Provide written affirmation that its laws, processes and procedures have produced demonstrable enforcement results.
7. Demonstrate compatibility with the EEOC's charge processing systems and methods.
8. Demonstrate that it has implemented procedures that provide for professionalized intake of all valid charges the FEPA initially receives, prompt notification to respondents, resolution of charges on a current basis, determinations supported by evidence, and resolutions with appropriate remedies.
9. Demonstrate that it trains its personnel in charge processing procedures compatible with those of EEOC.
10. Has implemented an effective case management system.
11. Demonstrate through its internal employment practices a firm commitment to equal employment opportunity.
12. Demonstrate timely and accurate entries of data into the EEOC's case management system so that EEOC may generate management and information reports.

E. Worksharing Agreements (WSAs): The purpose of a WSA is to ensure that each partner to the agreement can perform its duties to the public by processing charges filed based on its respective capability. Therefore, the primary goal of the agreement is to ensure an effective allocation of the dual-filed workload.

The WSA is appended to the contract. [See Appendix C- Model Worksharing Agreement]
 The EEOC district director and FEPA director will negotiate terms specific to the requirements of the FEPA's law or ordinance which may dictate the inclusion of information on a charge of discrimination that EEOC normally does not use. The inclusion of such language in the WSA will be negotiated to meet such needs. With regard to the processing of the charges initially received by each agency, language in addition to that contained in the model WSA may be included if local needs dictate.

HQ SLTP offers technical assistance to EEOC district directors and designated staff on the development of language to be included in the WSAs. Requests for such assistance should be addressed to the director or the deputy director of SLTP. If the request for technical assistance requires coordination between headquarters offices such coordination will be accomplished by HQ SLTP.

The requirement for the execution of WSAs will be contained in the contract and will be consistent with the three-year contracting cycle. In most instances, contract modification annually will be limited to any technical requirements of law and performance requirements for

the ensuing fiscal year. If negotiations need to be reopened regarding a WSA, the parties may mutually agree to such renegotiations. The WSA is incorporated into the contract.

SECTION IV- FEPA DESIGNATION AND CERTIFICATION

(Revised August 2022)

A. Overview: This section discusses the requirements, review, approval and evaluation processes for FEPA designations and certifications.

B. FEPA Designation: A designated agency is one that has a fair employment practices law which makes unlawful employment practices based upon race, color, religion, sex, national origin, genetic information, or disability; and has an authority that is empowered with respect to employment practices found to be unlawful to do one of three things:

- a. To grant relief from the practices;
- b. To seek relief from the practice; or
- c. To institute criminal proceedings with respect to the practices.

In accordance with 29 C.F.R § 1601.70, any state or local agency that seeks FEPA designation status should submit their request for designation to the Chair of the EEOC. The state or local agency is required to include a copy of their fair employment practices law and pursuant rules, regulations and guidelines of general interpretation with their application for designation. In addition, the state or local agency is requested but not required to:

- a. provide a copy of their most current organization chart;
- b. identify the amount of funding available or allocated by the agency or authority for fair employment purposes;
- c. provide the telephone number for the agency (authority) contact regarding legal or other questions surrounding the request; and
- d. provide a detailed statement describing how the agency or authority meets the qualifications.

Those state or local agencies applying for designation should be reminded that 29 C.F.R § 1601.70(d) allows the EEOC to reserve the right to defer to the state FEPA only. However, the regulations state that “where there exist agencies of concurrent jurisdiction, the Commission may defer to the FEP agency which would best serve the purposes of Title VII, ADA, or GINA, or to both.”

Upon receipt of the application package, under the leadership of the Office of the Chair and the Office of Field Programs, the HQ SLTP staff will undertake a review of the information provided for completeness and to identify possible issues that might affect designation.

As part of the review, HQ SLTP staff will contact the appropriate district director to obtain their comments regarding the state or local agency’s law and/or work processes. The application package and SLTP’s assessment of the application will also be sent to the EEOC’s Office of Legal Counsel (OLC) for a legal sufficiency review. Following receipt of the OLC’s comments and recommendations, the EEOC will offer the state Attorney General or Corporation Counsel, as applicable, an opportunity to provide comments. If favorable responses are received from the OLC, the applicable district director, the State Attorney General and Corporation Counsel, as

applicable, HQ SLTP/OFP will submit, after Office of the Chair review, a presentation memorandum package for vote by the Commission.

If the Commission approves the designation, the state or local agency will be notified through a letter from the Chair and the public will be notified by publication in the Federal Register of an amendment to §1601.74. The Directors of the Office of Field Programs and State, Local and Tribal Programs will ensure all relevant stakeholders are noticed.

Notice Agencies/Authorities-In the event a FEPA is not approved as a designated FEPA for the purposes of a particular basis of discrimination or where the agency or authority applies for designation as a Notice Agency, the Commission will notify the agency or authority of the filing of charges for which the agency or authority is not FEP agency. For such purposes that state or local agency will be deemed a Notice Agency. [§1601.71(b)]

C. FEPA Certification: The EEOC may certify designated FEPAs based upon the past satisfactory performance of those agencies. Certification of a designated FEPA enables the EEOC to accept the findings and resolutions of that FEPA. This is regarding cases processed under contracts with those agencies. The EEOC does not have to conduct the individual, case-by-case substantial weight reviews (SWR). However, SWR must be conducted when (1) Charging Party requests a SWR, (2) the FEPA closure was based on lack of jurisdiction, (3) the FEPA closure was based on an unsuccessful conciliation or (4) where the charge involves an issue currently designated by the Commission for priority review as identified in the EEOC's Strategic Enforcement Plan (SEP). In all other cases, a SWR is not required if the FEPA is certified.

Eligibility criteria for certification of a designated FEPA are as follows:

- a. that the state or local agency has been a designated FEPA for four (4) years;
- b. that the state or local designated FEPA's findings and resolutions pursuant to its contract with the Commission have been accepted in at least 95% of the cases processed within the preceding 12 months; and
- c. that the state or local designated FEPA's work product has been evaluated within the past 12 months by HQ SLTP in collaboration with district directors/designees and found to be in conformance with the EEOC's SWR procedures.

While in most instances, a designated FEPA will request certification, district directors may also initiate the certification process in their capacity as contract monitor.

D. Charge Review Procedures: Certified FEPAs are required to submit copies of the appropriate closure documentation for each charge resolution submitted. Timely requests for SWR will be conducted in accordance with the procedures set out in this Handbook.

E. Evaluation of Certified FEPAs: In accordance with 29 C.F.R § 1601.78 (a), each certified FEPA will be reviewed at least once every three (3) years to determine if such certification is to be maintained based on the agency's performance.

Evaluations will also be conducted, in accordance with 29 C.F.R § 1601.78, if the EEOC District Office rejects or finds ineligible more than five percent (5%) of the findings of the FEPA at the end of the year or 20 percent (20%) or more of its findings for two consecutive quarters. If in any one quarter the EEOC District Office rejects or finds ineligible over 20 percent (20%) of the FEPAs findings, the EEOC will initiate an inquiry and an evaluation may be conducted at that time.

F. Note on Revocation of Certification: §1601.79 states that certification of a designated FEPA is discretionary with the EEOC and the EEOC may, upon its own motion, withdraw such certification as a result of an evaluation conducted pursuant to §1601.78 or for any reason which leads the EEOC to believe that such certification no longer serves the interest of effective enforcement of Title VII, the ADA, or GINA. The Commission will accept comments from any individual or organization concerning the efficacy of the certification of any designated FEPA. The revocation shall be affected by the issuance and publication of an amendment to §1601.80.

SECTION V- CONTRACT CREDIT CHARGE REVIEW, SUBSTANTIAL WEIGHT REVIEW PROCEDURES, STANDARDS AND DOCUMENTATION

(Revised August 2022)

A. Overview: Substantial Weight Review (SWR)—an in-depth EEOC review of the substantive work completed by the FEPA on a case where the EEOC analyzes whether procedural and jurisdictional requirements were met, whether the standards of proof were correctly applied and whether the FEPA appropriately resolved the case. SWR may be requested by the parties to a charge (most commonly a Charging Party) and may be conducted as part of the EEOC’s overall review requirements discussed below. (See Appendix I-Substantial Weight Review Form)

Contract Credit—A FEPA may contract with the EEOC to complete a certain number of intakes. In these instances, the FEPA does not investigate the case, but handles the intake process from receipt of inquiry through serving the charge on Respondent, including an interview of the potential Charging Party to gather enough information to ensure the charge is accurate and inclusive of all jurisdictional allegations. In other cases, a FEPA may contract with the EEOC to complete a certain number of charge resolutions. In these instances, the FEPA investigates the case, gathers and weighs the evidence and comes to a resolution. In either instance, the FEPA will submit to the EEOC, a request of credit or non-credit for the intake or the charge resolution work they have completed. The EEOC either grants or denies the credit request. The EEOC may allow the FEPA opportunity to correct whatever deficiencies it determines exists before granting payment.

Certified and non-certified FEPAs are described in Chapter IV of this Handbook. For all non-certified FEPAs, 100% substantial weight reviews (SWR) by the EEOC is required.

For certified FEPAs, SWR are to be conducted on at least 10% of Title VII, ADEA and ADA cases submitted for contract credit. At the discretion of the EEOC district director and in collaboration with HQ SLTP, as applicable, the percentage of charges reviewed may be increased. Further, for certified FEPAs, substantial weight reviews (SWR) are to be conducted on 100% of No Jurisdiction resolutions, Unsuccessful Conciliation resolutions, and any resolution involving a current EEOC priority issue. (§1601.77) The 10% review requirement may be consumed into the 100% requirement if all statutes are accounted for. This will also count SWRs on request.

Beyond the 10% SWR overall review requirement for certified FEPAs and in addition to the 100% review requirement for No Jurisdiction resolutions, Unsuccessful Conciliation resolution, and resolutions involving a current EEOC priority issue, certain other resolutions may require additional review to ensure procedural and /or substantive accuracy, before the EEOC will grant contract credit.

B. Basic Review Requirements for all Credit Submissions: In the review of all charge files submitted for intake or contract credit, and for SWRs, the reviewer must ensure the following procedural and jurisdictional matters are met, regardless of the type of submission:

1. Charge is timely filed with FEPA,
2. Employer-employee relationship exists,
3. Requisite number of employees for jurisdiction exists,
4. Employer Respondent is located within the FEPA's geographic jurisdiction,
5. If ADA, analysis of whether Charging Party is disabled within one of the definitions of disability,
6. If Retaliation is only basis, analysis of whether the retaliation is covered under laws enforced by EEOC,
7. FEPA has provided timely notification of the charge to Respondent,
8. Charge meets the requirements of the WSA, and
9. Allegations exist that are sufficient to establish a prima facie case under Title VII, ADA and/or ADEA established.

C. Standards of Substantial Weight Review: The entire case file is uploaded in an acceptable format mutually agreed upon locally. The review standards contained herein are consistent and compatible with EEOC policy, procedures, training and guidance.² An analysis of the file must be completed in narrative form showing that the file has been completely reviewed in accordance with the standards. Accordingly, these standards should be used when evaluating resolutions submitted by a FEPA for contract credit. If, for any type of resolutions, the basic standards and/or documentation requirements are not met, the charge will be rejected by the EEOC for contract credit and the FEPA will be informed.

D. Results of Rejection: EEOC will reject charge files submitted by the FEPAs that do not meet the above standards. Contract credit and payment will be denied. The FEPA may appeal the rejection to the EEOC District Director or be given an opportunity to correct deficiencies noted. The FEPA has 10 days to decide whether it will take the opportunity to correct deficiencies noted. The FEPA must resubmit the charge file within 60 days to receive contract credit and payment or revoke credit request until processing can be completed.

E. No Cause Resolution: In general, a "no cause" finding will be accepted for contract credit when the file contains sufficient evidence to determine whether it is more "likely than not" that a statute has not been violated and the FEPA's finding is consistent with and supported by that evidence.

Standards of Review:

1. Indication of the relevant theory of investigation used: disparate treatment, disparate (adverse) impact, reasonable accommodation, harassment or retaliation.
2. Evidence that issues, statements of personal harm and/or allegations of individual and/or class discrimination raised in the charge and accepted for investigation were investigated under the appropriate theory.
3. Relevant witnesses were identified and interviewed.

² Guidance, policies and procedures may be found in the EEOC Strategic Plan, Strategic Enforcement Plan, Chair Priorities, Priority Charge Handling Procedures, Compliance Manual, Technical Assistance Manual on the Employment Provisions (Title I) of the American with Disabilities Act, etc.

4. Analysis of Respondent's stated policy and actual employment practices related to the charge, e.g., harassment, hiring, attendance, discipline, EEO, etc.
5. Results of comparative treatment of those similarly situated to Charging Party, as appropriate.
6. If disparate impact theory, investigation must include documentation showing seemingly neutral policy alleged to impact one group adversely.
7. Evidence establishing that Respondent's defenses have been tested for pretext.
8. Evidence that essential disputed facts have been resolved either through documentation, testimony, or credibility assessment, as deemed relevant.
9. For charges filed under the ADA, the investigation established that Charging Party was disabled within the meaning of the law and the appropriate investigative theory was applied.
10. Conclusions drawn are supported by fact with appropriate analysis.

Documentation Required:

1. Written evaluation of evidence that resolves disputed facts.
2. All Communication between the agency, Charging Party, Respondent, and/or the representative of either party.
3. Documentation that Charging Party was informed of Respondent's position and provided with an opportunity to rebut Respondent's defense(s).
4. Evidence to show findings are consistent with the EEOC's position on issues through application of the standards/models of proof.
5. FEPA secured underlying documents in support of positions offered by parties.
6. File is documented to show why witness (es) was deemed not relevant or affidavit/statements were not secured.
7. Written evidence of the notification to the parties of the outcome of the investigation.
8. All closure documents sent to Charging Party and Respondent.
9. Evidence that the FEPA informed Charging Party, in writing, of the right to request a Substantial Weight Review by the EEOC after all appeal rights with the FEPA were concluded.

F. Merit Factor Resolutions:

1. **Negotiated Settlements:** Settlement efforts are encouraged at all stages of the administrative process prior to a cause finding.

Standards of Review:

- a) The settlement agreement:
 - i. should contain appropriate relief for Charging Party.
 - ii. may address class relief, if appropriate, to include revision or revocation of troublesome (but not yet determined unlawful) policies or practices.

- iii. should specifically address the class aspects of the charge, including without limitation, inclusion of relief for class members (not necessarily individually)
 - iv. should provide a means to verify that the provisions are implemented and/or also provide a tool for monitoring any future action required.
 - v. must be executed by Charging Party, Respondent (or authorized representative) and FEPA representative.
 - vi. must contain a specific reference to close both the FEPA and the EEOC charges with an acknowledgement that Charging Party will not file a lawsuit.
 - vii. should contain a provision that any questions concerning non-compliance with the terms of the agreement should be referred to the FEPA.
- b) If benefits will accrue later, e.g., future hiring, the agreement must provide that Respondent will notify the FEPA within a specified time period after the terms of the agreement have been met.

Documentation Required:

- a) Copy of settlement agreement signed by all parties.
- b) If not included in the agreement, documentation to show Charging Party requested closure of the EEOC charge. If the EEOC charge is not closed, documentation from the FEPA explaining why the EEOC charge is not closed.
- c) Written verification that the terms of the agreement have been met (copy of check, copy of letter of reference, etc.).
- d) Description and computation of benefits.
- e) Copy of closure documents sent to the parties.

2. Withdrawal with Benefits: When the Parties resolve the charge without the assistance of the FEPA agency, Charging Party will execute a written request of withdrawal of his/her charge with benefits due to receipt of satisfactory relief from Respondent.

Standards of Review:

- a) A written request to withdraw because the parties have resolved the matter. Such request should contain a signature unless sent through an email that is one of Charging Party or the legal representative.
- b) A specific reference in the withdrawal document by Charging Party indicating their intent to withdraw the EEOC and FEPA charges.
- c) A statement that Charging Party was not coerced into withdrawing the case if not represented by legal counsel. If Charging Party is represented by legal counsel, such a statement is not required.

Note: While an enumeration of the specific benefits should be sought, such is not required, as Charging Party may have agreed to keep such information confidential as part of the consideration for the relief received.

Documentation Required:

- a) Copy of closure documents to all parties.
- b) The written withdrawal request, preferably the EEOC Form 154, Request for Withdrawal, signed by Charging Party or Charging Party's authorized or legal representative.

3. Conciliation Agreement: The objective of a conciliation agreement is to reach a just resolution of violations found and to obtain a written agreement which provides that Respondent will eliminate the unlawful employment practice and/or policy and provide appropriate affirmative relief and damages, where applicable.

Standard of Review:

- a) The conciliation agreement must provide for the elimination of that which caused the discrimination to occur, whether it be a discriminatory policy or practice with the goal to bring it into compliance with the statute under which the charge was filed.
- b) The agreement must provide for relief for Charging Party and all identified class members (although class relief does not necessarily have to be individualized).
- c) If appropriate, the agreement should provide compensatory damages.
- d) The agreement must contain a specific reference to the EEOC charge and its closure by the executed agreement and reference that Charging Party will not file a lawsuit.
- e) FEPAs should verify that all terms of the agreement have been met and/or a tool for monitoring for future action should be included in the agreement. Provisions should contain reporting on the part of Respondent, that certain obligations under the agreement have been satisfied.
- f) FEPAs may consult with the EEOC Director and/or his/her designee regarding terms of the conciliation agreement as needed.

Documentation Required:

- a) A copy of the fully executed conciliation agreement.
- b) Documentation requesting/showing the EEOC charge be/is closed, if not contained in the agreement.
- c) Copy of closures letters sent to all parties.
- d) Letter of Determination in which "reasonable cause" is found.
- e) If not contained in the conciliation agreement, a description and computation of all benefits.

4. **Unsuccessful Conciliation:** An unsuccessful conciliation occurs when the parties fail to reach agreement to eliminate the unlawful practice, policy or unlawful behavior alleged in the charge after a violation was found.

Standards of Review:

- a) Evidence that the FEPA has exhausted the entire internal administrative process including hearing and internal appeals.
- b) If the administrative process was not exhausted, the file must contain documentation which explains why such a decision was made.

Documentation Required:

- a) Copy of the Letter of Determination in which reasonable cause was found.
- b) Copy of closure documents sent to all parties.

5. **Administrative Hearings:** When an Administrative Hearing results in a final order, the Hearing Order should be the final resolution of the charge.

Standards of Review:

- a) Evidence that the FEPA has exhausted the entire internal administrative process including hearing and internal appeals.
- b) If the administrative process was not exhausted, the file must contain documentation which explains why such a decision was made.
- c) The FEPA is responsible for enforcement of the terms on the Hearing Order.

Documentation Required:

- a. Copy of the Hearing Order.
- b. Documentation that conciliation efforts failed prior to scheduling of hearing.
- c. Written documentation that Charging Party has elected the forum in which the case will be heard.
- d. Entire file includes evidence considered during the initial investigation resulting in the cause finding and the administrative hearing.

G. Administrative Closures:

1. **Withdrawal Without Benefits:** A Charging Party has the right to request withdrawal of his/her charge. The EEOC may not grant the request if to do so would defeat the purpose of the statute and EEOC's law enforcement mission. If a charge is withdrawn, the withdrawal affects the final closure and a Notice of Right to Sue is not issued. After counseling of Charging Party and receiving of a signed request to withdraw the charge, the case may be closed, as appropriate.

Standards of Review:

- a) Charging Party voluntarily withdrew the charge and that there was no coercion.
- b) There are no identified class members or class implications in the charge.
- c) Evidence gathered does not indicate a violation of the statute.
- d) Evidence in the file to show that Charging Party was counseled on the implications of withdrawal.

Documentation Required:

- a) Written document (EEOC Form 154 or otherwise) wherein there is a request to withdraw the charge that is signed and dated by Charging Party or Charging Party's legal representative. A signature is not required if the request is sent through an email that is one of Charging Party or Charging Party legal representative.
- b) A statement that there was no coercion to force Charging Party to withdraw the case.

2. Lack of Jurisdiction: In most circumstances the determination as to whether EEOC/FEPA has jurisdiction is made at the time of charge intake. The charge or complaint must be examined, and Charging Party closely questioned in order to compare the allegations to the requirements of the statute cited. In addition, the lack of jurisdiction must apply to the EEOC and the FEPA. If the lack of jurisdiction was known or should have been known at intake, credit cannot be granted. That is, the FEPA is responsible for ensuring jurisdiction information is obtained at the intake stage. Credit will be granted if the lack of jurisdiction cannot be determined at the intake stage. In other words, credit will be granted if it is clear that an investigation was warranted in order for the FEPA to determine jurisdiction.

Standards of Review:

- a) Timeliness: Charges initially filed with a FEPA are generally timely with the EEOC if filed within 300 days of the alleged violation.
- b) Standing: An individual must allege that he or she has been directly injured by the discriminatory employment practice. There is an exception in those instances when an individual is filing on behalf of a person who has been directly harmed.
- c) No employer-employee relationship: No employer-employee relationship exists to establish jurisdiction where the employer has fewer than the requisite number of employees for coverage under the statute cited, Charging Party is not an employee but a truly independent contractor. See guidance on jurisdiction and threshold issues.

Documentation Required:

- a) A memorandum to the file prepared by the FEPA explaining the rationale for closing the charge for lack of jurisdiction.
- b) Evidence necessary to support the lack of jurisdiction closure, e.g., payroll records covering the appropriate time period to establish that Respondent had fewer than 15 employees in a Title VII or ADA case or 20 employees in an ADEA case. In instances where the FEPA asserts that there is no employer-employee relationship, the file must contain documentation to satisfy the EEOC Compliance Manual on Threshold Issues.
- c) Copy of closure documents sent to the parties.

3. Unable to Locate Charging Party: Although this type of resolution is no longer used on the EEOC side, FEPA may still use such. In those instances, a FEPA must establish that it was unable to locate Charging Party when Charging Party's presence was essential to the processing of the charge. Please see EEOC Guidance on closing cases as no reasonable cause if submitted by the FEPA as Failure to Locate or Failure to Cooperate.

Standards of Review:

- a) A reasonable effort has been made to locate Charging Party, through a contact person, telephone call, e-mail, etc.
- b) Notice sent by the FEPA to Charging Party at the last known address and/or email address indicating that the charge may be dismissed by the EEOC if no response is received. The notice is returned with no known forwarding address or email returned undeliverable.

Documentation Required:

- a) Copy of the returned envelope or undeliverable email showing that Charging Party has moved and left no forwarding address, or the forwarding notice has expired.
- b) If Charging Party failed to claim mail sent previously, a copy of the correspondence (including envelope) returned unclaimed (whether regular, certified, or registered) and any follow-up correspondence.
- c) Written verification that the FEPA attempted to contact Charging Party via the contact person unsuccessfully. A copy of the correspondence or, if contacted by telephone, a memorandum to the file detailing efforts made to locate Charging Party.
- d) Written verification of other attempts to locate Charging Party (e.g., results of internet searches, contacts with EEOC or any other source), as applicable.
- e) Copy of closure documents sent to the parties.

4. Charging Party Failure to Cooperate: Although this type of resolution is no longer used on the EEOC side, FEPA may still use such. FEPA must establish that Charging

Party did not provide necessary information that was essential to the processing of the charge. Failure to provide a rebuttal to a position statement, unless the charge appears to have potential to lead to a reasonable cause finding with Charging Party's assistance, is not a reason to require Charging Party's cooperation. Instead, if the charge appears No Cause in the absence of a rebuttal, then this closure type should not be used.

Standards of Review:

- a) A reasonable effort has been made to get Charging Party to cooperate in the investigation.
- b) FEPA sent EEOC letter provided by the district director indicating that Charging Party has 30 days in which to provide the needed information or to appear to a meeting, conference, or other appointment. Notice is to be sent concurrently with FEPA's final correspondence to Charging Party which informs the charge will be dismissed absent a response as requested. Notice was sent by the FEPA to Charging Party at the last known address indicating that the charge may be dismissed by the EEOC if no response is received. The notice may or may not be returned with no known forwarding address or current email.

Documentation Required:

- a) FEPA letter to Charging Party providing 30 days in which to respond, along with a copy of the EEOC letter.
- b) Explanation as to why Charging Party's cooperation was necessary.
- c) Copy of closure documents sent to the parties.

5. Failure to Accept Appropriate Relief: Appropriate relief comes when Respondent's offer would restore Charging Party to where they would have been but for the discrimination.

Standards of Review:

- a) Respondent's offer is detailed in writing.
- b) The EEOC District director concurs with the FEPA finding of failure to accept appropriate, make whole relief, as applicable.

Documentation Required:

- a) Copy of Respondent's written offer.
- b) Written verification that the offer was transmitted to and rejected by Charging Party.
- c) Charging Party's declination of offer with reason(s) if provided, to believe that the offer is not make whole remedy.

- d) Copy of FEPA letter detailing the terms of the offer and informing Charging Party of its intent to dismiss the charge unless the offer is accepted or Charging Party states why offer is insufficient.
- e) Documentation reflecting consultation with EEOC District director and/or Regional Attorney, if such discussion occurred.
- f) Copy of closures document sent to the parties.

6. Out of Business: When a named Respondent has ceased doing business or providing services, it must be determined whether another company is a successor in interest to Respondent's assets/liability, and whether a successor may be held liable for the named Respondent's alleged discriminatory act.

Standards of Review:

Successorship was investigated using the inquiries listed below and based on evidence detailed in the file successorship was not established and the charge was recommended for dismissal. Generally, the successor can only be held liable if it had notice of the charge *and* the predecessor is unable to provide relief. The third factor, continuity of business operations, requires a weighing of the criteria listed in bullets below.

The following factors should be considered:

- a) Whether the successor entity had notice of the charge.
- b) Whether the predecessor can provide relief.
- c) Whether the same business operations have continuously been in place:
 - Whether the successor used the same plant, workforce, management, and/or equipment and means of production as the predecessor;
 - Whether the same jobs exist under substantially the same working conditions.
 - Whether the successor produces the same product.

Documentation Required:

- a) Written response from Respondent or Respondent's representative to questions regarding where Respondent is located, etc.
- b) Assessment of successor liability with determination.
- c) Copy of closure documents to all parties.

7. Bankruptcy: In order to properly process charges filed against businesses that are in bankruptcy, you must first determine the type of bankruptcy protection filed. The most common types of filing under the U.S. Bankruptcy Code are, Chapter 7- liquidation; Chapter 11- reorganization; and Chapter 13- Adjustment of debts of a business or individual with regular income.

Investigations should continue for bankruptcy filings under Chapter 11 and 13. Businesses are still in operations and records are maintained from which evidence may be obtained. However, FEPA's must coordinate with the EEOC to ensure that proofs of claims are appropriately filed to protect the interests of Charging Party.

H. Procedures for Appeal and Opportunity to Correct Deficiencies: For all rejections, the FEPA will be given 10 calendar days from the date of receipt of notification of rejection in which to appeal the decision and/or in which to indicate that the FEPA will correct the noted deficiencies. If no action is taken by the FEPA within this time period or those otherwise specified for certain types of resolutions mentioned above, the rejection will become final.

1. **Appeal Process:** An appeal may be made for any reason but will generally be made when 1) the FEPA believes that EEOC overlooked documentation provided for the review process, 2) the FEPA disagrees with the conclusions drawn by the EEOC.

EEOC will provide the FEPA with a copy of the completed EEOC SWR setting forth the reasons for rejections. The FEPA must inform the EEOC within 10 calendar days of its intention regarding the rejection. If the FEPA appeals, the response with documentation must be returned to the EEOC within 60 days.

When an appeal is received by the EEOC, the appeal will be reviewed by the district director or his/her designee. If the FEPA prevails in its appeal, the district director or his/her designee will document the file to reflect that the initial finding is accepted. The charge will then be processed for closure. If the district director or his/her designee concludes that the rejection stands, the district director or his/her designee will convey that decision on the appeal, in writing, within 10 calendar days of its initial receipt. If the appeal is not granted, the district director or his/her designee will include the rationale for rejection in the appeal decision.

If the EEOC accepts the appeal, the appropriate closure action will be entered into the case management system, and the submission will receive full contract credit.

2. **Opportunity to Correct Deficiencies:** The FEPA will be given an opportunity to correct deficiencies noted on the appropriate form transmitted. Action to correct deficiencies may be taken by the FEPA in addition to appealing or in lieu of appealing.

The FEPA must timely inform the EEOC if it opts to correct the deficiencies. Submission of the additional documentation must be provided to the EEOC within 60 days, if no appeal, or within 60 days from the date that the FEPA received the decision denying the appeal. The EEOC and FEPA may agree that the FEPA will simply remove the credit request as a solution. Any requests for extension beyond 60 days must be agreed to by the EEOC in writing.

If the necessary information is submitted and the EEOC determines that the submission is acceptable, the charge will be processed by the EEOC to closure.

If the FEPA determines during or at the conclusion of an investigation that a finding different than the original is required, the FEPA will notify the EEOC in writing. No further action will be taken by the EEOC pending the FEPA's subsequent actions.

I. Reviews for Additional Credit: Contact credit will be given for certain types of cases even though the FEPA has not issued a final finding. In all cases, Substantial Work (see Glossary) must have been accomplished and accepted for credit to be granted. The above-mentioned appeal process does not apply to charges in this section.

1. EEOC Asserts Jurisdiction: Credit will be given to the FEPA if it completed substantial work (determined by the EEOC office) at the time the EEOC asserted jurisdiction. This is to be used in limited circumstances, e.g., when the EEOC is consolidating charges into one investigation. If the FEPA has done substantial work and but for the EEOC asserting jurisdiction, would have brought the charge to resolution, the FEPA should receive the credit it would have received had it been allowed to complete the investigation. The EEOC will review a copy of the complete FEPA file and will determine if substantial work has been completed.

2. Issuance of Notice of Right to Sue: In situations where Charging Party has requested and will receive a Notice of Right to Sue (NRTS), credit will be given to the FEPA if substantial work has been completed. FEPA needs to provide a copy of the signed or e-mailed request from Charging Party or Charging Party's legal representative. In addition, if the FEPA is requesting credit consideration, proof of substantial work is required. When notified of the issuance of the NRTS by the EEOC, the FEPA must submit documentation to establish that substantial work has been completed. If the EEOC agrees that substantial investigation has been completed, contract credit will be given.

3. Waivers to EEOC after Onset of FEPA Investigation: These are charges that have been transferred from the FEPA to the EEOC at Charging Party's request and in accordance with procedures contained in the work sharing agreement provide for a mutually agreeable system of determining what charges may be waived or transferred and under what circumstances. The EEOC will review a copy of the complete FEPA file and will determine if substantial work has been completed.

4. Charging Party Sues in Court under the ADEA: Credit for the FEPA's processing where Charging Party elects to pursue private litigation will be given only when a determination has been made that substantial work has been completed before the court action is filed. In addition, the allegations set forth in the complaint filed in court must be substantially the same allegations raised in the charge. The FEPA must submit copies of closure documents sent to all parties, copy of the complaint filed in court and evidence that substantial work has been completed.

SECTION VI - AGENCY RECORDS CENTER

(Revised August 2022)

This section does not contain all the information found in the User Guides on the Agency Records Center (ARC) created for the SLTP Function. Reference should be made to the User Guides for specific information on how to use ARC.

A. Prerequisites to requesting credit in ARC: To eventually request credit in ARC, charges need to have both a federal allegation and be dual-filed in ARC.

1. **Federal Allegation:** In order to be considered eligible for dual-filing with the EEOC, a charge must include at least one statute in the allegations entered to ARC.

- ☐ ADA
- ☐ ADEA
- ☐ EPA
- ☐ GINA
- ☐ Title VII

2. **Dual-Filing:** Notifications must be completed by the FEPA and EEOC alike before credit can be requested in ARC. Staff who enter a charge must enter the appropriate Deferral Office as well as the Receiving Office Intent. (See Charge Finalization/ Amended Charge Tab in ARC.)

Charge Finalization

Enter 'Charge Finalization' information to prepare an unsigned draft of the Charge of Discrimination (Form 5) for the Charging Party to review and sign

GENERATE DRAFT AND SEND TO CP FOR REVIEW

PREPARE CHARGE & GENERATE COD DRAFT

SAVE

Deferral Office: *	Receiving Office Intent
Not Applicable	

The Deferral Office will acknowledge with its corresponding intent in ARC on the Dual-Filing option under the FEPA Tab. (for example, if the Receiving Office indicates it is investigating, then the Deferral Office will generally answer that it will defer.)

Dual Filing

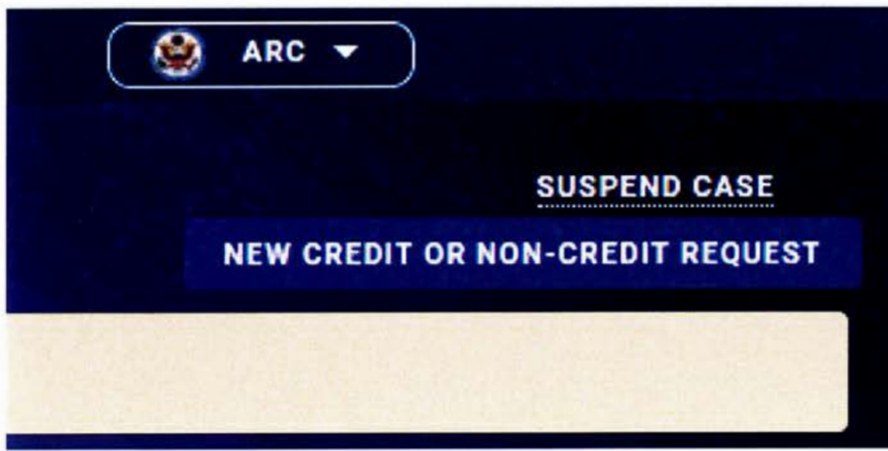
Send or receive notifications and acknowledge dual filed charges.

Charge Notifications and Acknowledgements

Deferral Office
Detroit Field Office

Incoming	Outgoing Notifications	Received Replies
Accept waiver-will investigate		
Decline to File		
Decline Waiver-Will Not Investigate		
SEND Defer Investigation	420 624098	Michigan Department Of Civil Rights Investigate Charge
Dismiss/Close Charge		

- B. **FEPA - Making a Credit/Non-Credit Request:** Upon Completion of the Pre-Requisites a button to request contract credit should display in the upper right corner for any given charge, provided the ARC user is a FEPA supervisor.



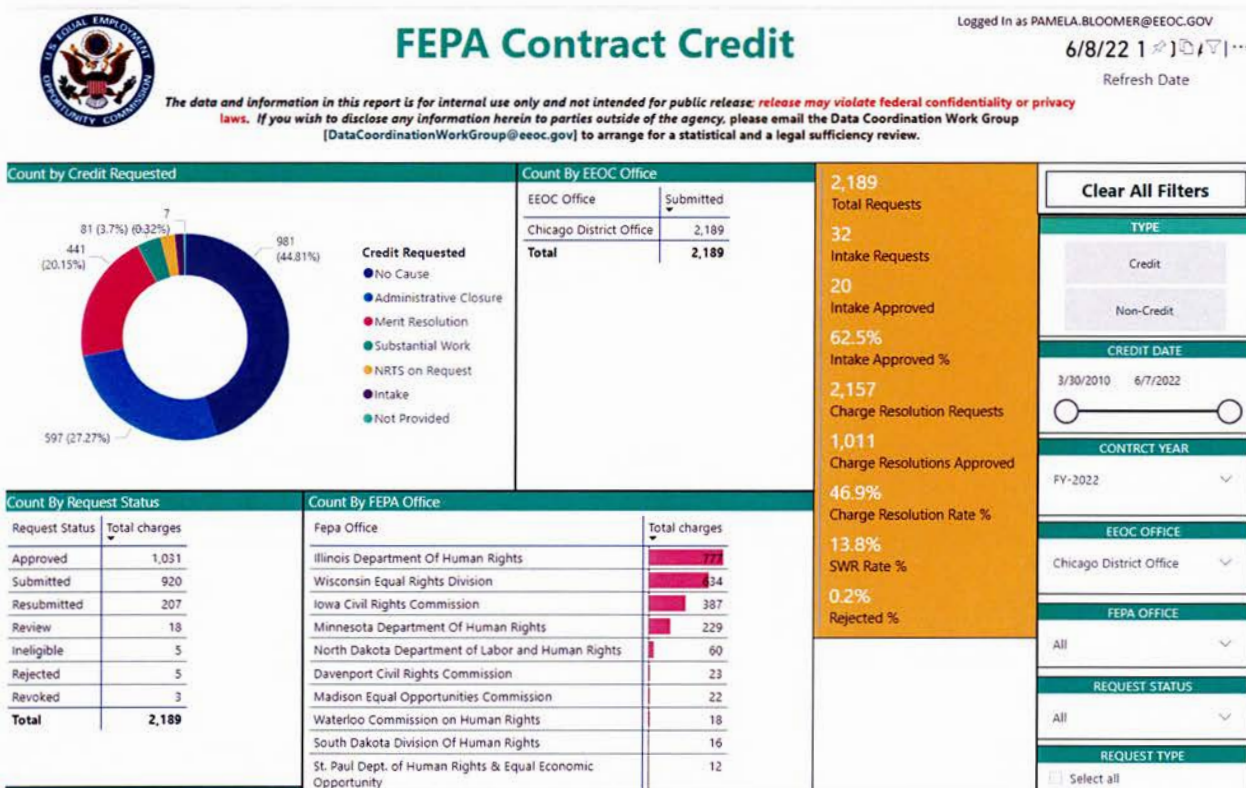
Clicking the Request button will open a dialogue box allowing the user to indicate which type of credit is being requested. (Consult the user guide for which credit types to select.)

C. EEOC – Provide Credit Response: SLTPC/M will respond to credit and non-credit requests via the following ARC screen:

35


D. Monitoring Credit: Credit may be monitored by EEOC using the FEPA Contract Credit Report and by FEPAs using Charge Receipts, Pending, and Resolution Reports. Soon, there will be a FEPA user version of the FEPA Contract Credit Report.

1) EEOC Reports:



2) FEPA Reports:

a) FEPA Charge Receipts Report



Charge Receipts - FEPA

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07/18/2022
Data Last Refreshed

TOTAL CHARGES RECEIVED

12

Charge Number	FEPA CHARGE NUMBER	CHARGING PARTY NAME	RESPONDENT NAME	INITIAL INQUIRY DATE	DATE FIRST OFFICE	COMMUNICATION METHOD	STATUS
388-2022-00001	21-305	[REDACTED]	[REDACTED]	09/23/2021	10/01/2021	Phone	CLOSED
388-2022-00002	21-315	[REDACTED]	[REDACTED]	10/01/2021	10/19/2021	Phone	OPEN
388-2022-00003	21-321	[REDACTED]	[REDACTED]	10/07/2021	10/11/2021	Phone	OPEN
388-2022-00004	21-352	[REDACTED]	[REDACTED]	10/26/2021	11/04/2021	Phone	OPEN
388-2022-00005	21-361	[REDACTED]	[REDACTED]	11/02/2021	11/09/2021	Phone	CLOSED
388-2022-00006	21-366	[REDACTED]	[REDACTED]	11/08/2021	11/09/2021	Phone	CLOSED
388-2022-00007	21-347	[REDACTED]	[REDACTED]	10/22/2021	11/12/2021	Phone	OPEN
388-2022-00008	21-319	[REDACTED]	[REDACTED]	10/04/2021	11/05/2021	Phone	OPEN
388-2022-00009	21-374	[REDACTED]	[REDACTED]	11/15/2021	11/18/2021	Phone	OPEN
388-2022-00010	21-368	[REDACTED]	[REDACTED]	11/09/2021	11/19/2021	Phone	CLOSED
388-2022-00011	21-390	[REDACTED]	[REDACTED]	12/01/2021	12/13/2021	Phone	CLOSED
388-2022-00012	21-404	[REDACTED]	[REDACTED]	12/17/2021	12/30/2021	Phone	OPEN

Page Filters

CLEAR ALL FILTERS

CHARGE STATUS
All

STATUTE
☐ Select all
☐ ADA

FORMALIZED DATE
10/1/2020 7/18/2022

FISCAL YEAR & QTR
FY2022

RESPONDENT
Search

RESPONDENT COUNTRY
All

ACCOUNTABILITY OFFICE
[REDACTED]

FORMALIZATION OFFICE
All

SOURCE OF COMPLAINT
All

STATUS & STAGE
All

PROCESSING CATEGORY
All

COMMUNICATION METHOD
All

PROJECT
All

The Detailed information for this Report includes:

- EEOC Charge Number,
- FEPA Charge Number,
- Charging Party Name,
- Respondent Name,
- Initial Inquiry Date,
- Date First Office,
- Charge Stage,
- Closure Type,
- Closure Date,
- Source of Complaint,
- Statute, Basis, and Issue(s).

b) Pending Inquiries and Charges Report:



Pending Inquiries and Charges - FEPA

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Clear All Filters

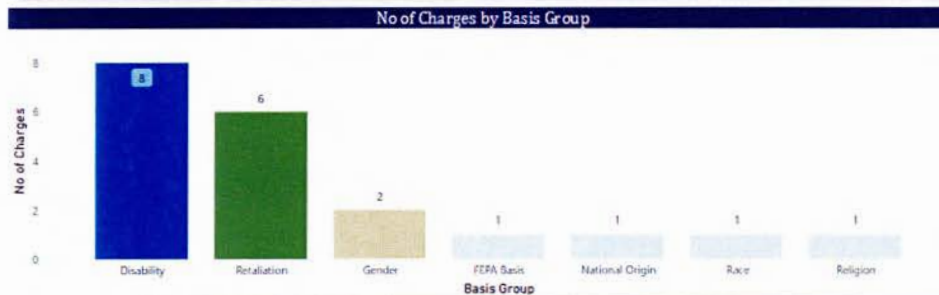
07/18/2022

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Dataset Last Refresh Date

Page Filters

Total Pending	Pending Inquiries	Pending Charges
12	0	12
Avg Charge Age	Avg Office Age	Avg Staff Age
723	723	720
Total Unassigned Charges		0



No of Charges by Statute

Statute	No of Charges
ADA	8
Title VII	5
Total	12

No of Charges by Staff Assigned

Staff Assigned	No of Charges
Franklin, Gita	12
Total	12

As Of Date
7/18/2022 7/18/2022

Charges/Inquiries
☒ Charges

Inquiries FY
All

Staff
Franklin, Gita

Staff Function
All

Statute
Multiple selections

Charge Stage
All

The Detailed information for this Report includes:

- EEOC Charge Number,
- FEPA Charge Number,
- Charging Party Name,
- Respondent Name,
- Respondent County,
- Respondent State,
- Initial Inquiry Date,
- Date First Office,
- Charge Stage,
- Staff Assigned,
- Staff Function,
- Charge Age,
- Statute, Basis, Issue, and
- Type of Respondent.

c) Resolutions Report:



RESOLUTIONS - FEPA

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7/18/22 3:31 PM

Refresh Date

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The Detailed information for this Report includes:

- EEOC Charge Number,
- FEPA Charge Number,
- Charging Party Name,
- Respondent Name,
- Monetary Benefits,
- Closure Staff,
- Closure Date,
- Closure Reason,
- Charge Age,
- Staff Age, and
- Conciliation Time.

Contract Credit Report for FEPAs—under development

SECTION VII- REPORTING WORK ACTIVITY

(Revised August 2022)

The purpose of this section is to set forth the objective of maintaining an integrated data integrity system that supports the data integrity, case management, and inventory control requirements of the EEOC-FEPA contracts and to ensure that accurate, up-to-date data for dissemination to the public is available.

The most effective way to ensure that data is maintained in the fashion desired by both the EEOC and the FEP Agency is to establish and sustain on-going communications. This can be achieved by proper consultation among the EEOC Information Technology Specialist, SLTPC/M and their respective counterparts in the FEPA. However, to ensure a high level of data accuracy, what follows are steps that should be taken to maintain the data integrity of the systems used by EEOC and the FEPA. FEPA/ARC has been developed and enhanced to provide the tools necessary to ensure that the data kept is accurate. By using these tools on a regular and routine schedule, the maintenance of data is not onerous on any of the parties responsible for data integrity.

A. Data Integrity: In order that ARC works for all parties concerned; the following steps should be taken in a timely manner. Where entries must be completed within specified time frames, such time frames are indicated.

- Accurate and timely receipt data entered within five days of receipt of charge.
- Data entries are reviewed for accuracy by staff other than data entry personnel.
- Required reports are run timely and checked for accuracy by supervisors and/or managers.
- Data integrity reports (missing charge data and charge transfer reports) are run and reconciled quarterly at a minimum.
- Data in the FEPA/ARC is reconciled with the EEOC data base quarterly.
- Hard inventories are conducted as directed.

In order to conduct reconciliations, it is important that all the parties with responsibility for the system, including but not limited to the SLTPC/M, accountable staff in the FEPA, EEOC's ITS and FEPA counterparts, and management of the FEPA and the EEOC, know that the following data items must be entered on each charge:

- Charge number
- Date of alleged violation
- Filed-on Date

- Date of receipt (first office)
- Statute(s)
- Basis(es)
- Issue(s)
- Charging Party name, gender, race, national origin, ethnicity, address, city and state, and email address (if available), date of birth (for age cases), telephone number (if available)
- Respondent name, address, city and state, telephone number, and email address (if available)

The following schedule should be adhered to by the EEOC and the FEPA. For those FEPAs who are not on the FEPA/ARC system, the EEOC will perform these functions.

B. On a daily basis, the following tasks ensures that data integrity is an integral work component. Note however that users have up to 5 business days, per the Contracting Principles, to perform these tasks.

- Enter charge receipt data to include all basic information into ARC
- Formalize all perfected charges
- Respond to Dual Filing requests in ARC
- Conduct supervisory review of receipts for basic charge data, comparing them against charge documents for accuracy and enter corrections into ARC.

C. On a monthly basis, the following tasks should be accomplished:

- Conduct supervisory review of ARC case processing reports (receipts, resolutions and pending) for workload management purposes and accuracy and enter corrections into ARC.
- Reconcile receipts and resolution reports, enter corrections as needed and advise OIT/HELP DESK
- Conduct additional data accuracy checks, as needed.

D. On a quarterly basis, the following tasks should be accomplished:

- Run and reconcile pending report from ARC.

- Run and reconcile contract credit reports and forward as directed.
- Review ARC problems and revise ARC procedures as needed.

E. **On an annual basis**, the following tasks should be accomplished:

- Conduct hard inventory of pending inventory and resolutions, if applicable.

F. **Submission of Payment Vouchers**: Prior to submitting the voucher to the Payment Center, the FEPA must send a draft to the SLTPC/M for approval. If such vouchers are deficient or contain errors, the vouchers will be returned to the FEPA for correction and resubmission.

SECTION VIII – TRIBAL EMPLOYMENT RIGHTS OFFICE (TEROs) (Revised August 2022)

A. History of the EEOC and TERO Relationship: A Tribal Employment Rights Office (TERO) is the unit within the tribal government structure whose purpose is to encourage and facilitate the use of Indian employment in business and industries located within the geographical boundaries of tribal lands.

Sec. 703(i) of Title VII states:

Nothing contained in this subchapter [regarding unlawful employment practices] shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

The EEOC first became involved with TEROs in 1976, when it entered into an arrangement with an Indian-owned consulting firm to establish a working relationship with 15 TEROs. The Tribes were selected for participation by the contractor and the EEOC based on interest, the potential for a successful model program, and the tribes' willingness to commit at least one staff person to the program.

Out of respect for the diversity of each of the participating Tribes, the contract allowed the Tribes full license to work toward enforcement provisions according to the needs of and political climate surrounding each reservation.

At the end of the contract period, 15 TEROs were established. Interest in the program continued to grow and EEOC entered into a second contract with the firm to establish 10 additional TEROs. This completed the first step toward achieving equal employment rights for American Indians³ on tribal lands.

The next step was to establish an EEOC/TERO relationship whereby EEOC would fund TEROs under demonstration contracts to assist in promoting and protecting the employment rights of American Natives working for private employers on or near tribal land.

Tribal governments have the inherent sovereign power to regulate commercial dealings by all entities within their jurisdictions, which gives them the authority to require employers on the tribal land to give preference to Indians in employment and business opportunity.

The Tribes can:

- Set the minimum number of tribal members each employer must hire- for each craft or job classification;

³ The terms "Indian", "Native American/Alaska Natives" and "American Indian/Alaska Natives" are commonly used interchangeably. Further, tribal lands may include geographical locations that are not reservations.

- Review the employer's job qualifications to make sure there are no qualifications that are irrelevant to good performance;
- Set up a hiring system to refer applicants to employers; and
- Set up a training program that requires employers to hire a certain number of partially trained tribal members and continue to train them on the job.

B. Tribal Relations/Consultations in General: While the EEOC has historically had contractual relationships with TEROs, in 2021, a renewed focus was placed on government relations with Tribes in general.

In accordance with President Biden's *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships* (Presidential Memorandum), which directs federal agencies to implement the policies and directives of Executive Order 13175 of November 6, 2000, the EEOC, consulted with Tribal leaders April-August of 2021 and submitted a plan of action. To express the EEOC's position as it relates to Tribes in general, the plan, in part, includes:

1. **Governing Principles:** The United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian Tribes to self-government and maintains a government-to-government relationship with federally recognized Tribes. Indian Tribes exercise inherent sovereign powers over their members and territory. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian Tribes.

In accordance with the government-to-government relationship, the EEOC is committed to working with Indian Tribes in a manner that respects Tribal self-government and sovereignty, honors Tribal treaty and other rights, and meets the Federal Government's Tribal trust responsibilities. Accordingly, the EEOC will consult with federally recognized Tribes before adopting policies that have Tribal implications, including its policy on Tribal consultation. Under Executive Order 13175, the phrase "Policies that have Tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. (*See* Section 1(a) of E.O. 13175). The term "policies" does not include matters that are the subject of investigation, anticipated or active litigation, or settlement negotiations. Nor does it include individual grants or contracts.

While the EEOC generally lacks jurisdiction over Tribes under most of the laws that it enforces, federal anti-discrimination laws protect Tribal members against discrimination when employed in positions covered under EEOC-enforced laws. The EEOC Chair will take steps to ensure that the various agency components notify the designated agency officials for Tribal consultation and the Office of Legal Counsel (OLC) whenever they plan to undertake a new policy that fits within the definition of "Tribal implications."

Once notified, the EEOC Chair's designated agency officials, in conjunction with OLC, will review the submission to determine if Tribal consultation is necessary or appropriate.

2. **Consultations:** *Commitment and Designation of Agency Officials*

The EEOC is committed to ensuring agency officials are fully engaged and involved in the Tribal consultations. The EEOC Chair, or other appropriate senior agency officials, will participate in Tribal consultations. The EEOC Chair has designated the EEOC's Director of State, Local and Tribal Programs and the Chair's Senior Attorney Advisor with responsibility for Tribal matters to coordinate implementation of this plan of action and to prepare progress reports.

The designated agency officials will establish a broad internal process to review planned agency actions to determine whether Tribal consultation is necessary or appropriate. If Tribal consultation is deemed necessary or appropriate, the designated agency officials will initiate consultation with Tribal nations consistent with the EEOC's Tribal Consultation Process.

C. Outreach/Education/Consideration to/of Tribes in General: The EEOC is committed to locating and educating tribes and tribal members through robust outreach and education efforts, regardless of whether such tribes have a TERO office that contracts with the EEOC. SLTP field and headquarters staff, as well as, field and headquarters outreach and education staff work collaboratively to ensure tribal members, tribal employers, employers who conduct business on or near tribal land, etc. know their rights and responsibilities as they relate to workplace discrimination.

The EEOC has created knowledge scripts for the Information Intake Group and frequently asked questions regarding TEROs and Tribes. The FAQs are located at www.eeoc.gov/tribal-programs. (See Appendix H—FAQs TEROs and Tribe)

D. TERO Program Procedures and Reporting: TEROs enforce their tribal ordinances against job discrimination, serve as referral and replacement links between employers and residents of the tribal lands, negotiate Indian preference agreements and take and process complaints of employment discrimination under their tribal ordinances. In addition, TEROs direct educational seminars and conferences to increase tribal member awareness of their special preference rights and of their federal employment rights as well as educate employers operating on tribal lands about Indian preference requirements.

TEROs use employment rights laws to compel employers to hire and promote tribal members. Being part of a sovereign government, they operate under the statutory authority of those sovereigns. TEROs meet with new employers coming on or near the tribal land and explain the requirements of their tribal ordinances and regularly require reporting by all employers operating on tribal lands. Once a tribal member is hired, the TERO works with the employee and the employer operating on tribal land to ensure retention. If a problem arises that can be solved, the employer is required to retain the employee while the TERO makes the appropriate referrals to get help for the individual. In many instances it prevents the need for filing a complaint of

discrimination under tribal ordinance or a charge with the EEOC under Title VII in instances of concurrent jurisdiction.

There are 574 federally recognized tribes. There are approximately 300 Tribes that have established TEROs. The EEOC contracts with 61-63 TEROs who meet the criteria indicated below, for on-going development of their capacity to identify, eliminate, and remedy employment discrimination occurring on tribal lands.

Currently eight (8) EEOC Districts have TERO responsibilities: San Francisco, Chicago, Phoenix, St. Louis, Los Angeles, Indianapolis, Charlotte, New York. The SLTPC/M provides technical assistance and training to the TEROs and may attend monthly meetings and other events held by TEROs.

In most instances, TEROs communicate with their local EEOC liaison in matters where jurisdiction may be an issue or when the TERO believes that the EEOC's assistance will help to advance/resolve matters at the TERO level. In other instances, TEROs actually refer tribal members or non-tribal members working on tribal lands for non-tribal employers to the EEOC.

1. **Criteria for TERO Funding Contract:** To be considered for initial and continual funding by the EEOC, a tribe must:

- Be a land-based, federally registered tribe with sovereign jurisdiction over a geographically described reservation/tribal lands;
- Have an enforceable ordinance passed by the tribal leadership which prescribes the individual complaint process and an employer's responsibility under Indian preference on the tribal land;
- Have established a TERO which is currently operating with a director on board;
- Have the financial capability to administer government funds;
- Augment contract funds with necessary fiscal, in-kind and personnel support to assure performance as required under the EEOC contract; and
- Accept contract funds without withholding indirect cost. [See [Appendix D](#) - TERO Request for Information]

2. **Duties of EEOC State, Local and Tribal Programs Coordinator/Manager (SLTPC/M):**

- Monitors TERO activities through review of quarterly reports and meetings;
- Plans and conducts annual training;
- Responds to inquiries from TERO Directors and Tribal members;
- Provides training on EEOC procedures, including investigative processes and intake as well as laws enforced by the EEOC;
- Assists TEROs in completing payment vouchers and monitors payments to TEROs;
- Participates in joint training/outreach with TEROs;
- Ensures the annual request for information (RFI) is completed and submitted to HQ SLTP in a timely manner;

- Informs the District Director of any problems and recommends remedies for the TERO program, as applicable;
- Ensures that the TERO has the most updated EEOC Pre-Charge Inquiry Form.

3. **Rules for Annual Funding:** TERO contracts are executed annually according to stated eligibility criteria by Tribal Leadership and the appropriate EEOC District Director. Quarterly progress reports are required. The quarterly reports summarize efforts to establish Indian preference goals with employers, aid individuals in job seeking or skills development, detail TERO discrimination complaints and referrals to the EEOC, describe preventative activities undertaken with employers, and outreach conducted for community dissemination.

The TERO must have met the following criteria during the previous contract period to be considered for continued funding:

- Processed complaints of employment discrimination under a tribal ordinance;
- Secured new and/or renewed Indian preference agreements from on tribal land employers or employers operating within commuting distance of the tribal lands;
- Secured tribal ordinance and/or preference agreement resolutions;
- Made referrals to employers on or near the tribal lands;
- Conducted on-site inspections of employers operating on the tribal lands;
- Performed tribe-wide information dissemination activities designed to increase awareness of Native American/Alaska Native rights with respect to employment discrimination;
- Completed or assisted the completion of an EEOC Pre-Charge Inquiry Form for all potential charging parties (PCP) with whom they've spoken and forwarded a copy to the EEOC District Office or referred the PCP to the EEOC; and
- Submitted all required reports within the prescribed reporting schedules. [See Appendix D - TERO Request for Information]

4. **TERO Assistance with Inquiries/Jurisdiction Questions:** When a person with an employment discrimination problem contacts the TERO, the TERO representative interviews the person to ascertain the basis of the complaint and determines whether Respondent is a private employer located on tribal lands. Because tribes are sovereign nations, they are empowered to exert jurisdiction over tribal and non-tribal employers operating on tribal lands as a general rule. However, when the employer is non-tribal, the EEOC will also have jurisdiction.

The EEOC has jurisdiction over private (non-tribal) employers operating on tribal lands or that contract with a Tribe, depending on the size of the employer:

- Private employer with at least one employee regarding claims of gender-based pay discrimination under the EPA;
- Private employer with at least 15 employees regarding claims under Title VII, ADA and/or GINA;

- Private employer with at least 20 employees regarding claims under the ADEA by individuals age 40 or older.

It is important to note that while the EEOC has jurisdiction to enforce all the covered laws with respect to **private** employers operating on Tribal lands, such is not the case relative to charges against federal recognized tribes.

The EEOC has jurisdiction over two types of employment discrimination charges against federally recognized tribes: (1) age discrimination charges under the ADEA; and (2) gender-based pay discrimination charges under the Equal Pay Act, unless the application of these statutes would infringe on treaty rights or Tribal sovereignty.

The EEOC does not have jurisdiction over charges of employment discrimination against federally recognized tribes if the alleged discrimination is based on race, national origin, sex, color, or religion (under Title VII), disability (under the ADA), or genetic information (under GINA). Note that the retaliation basis falls under all statutes enforced by the EEOC.

It may be difficult for employees or applicants for employment to determine if Tribes, tribally owned businesses, or private businesses on tribal land fall under the EEOC's jurisdiction. Employees and applicants are welcome to file charges with the EEOC if they are uncertain about whether the employer is covered. The EEOC will determine whether it has coverage.

In concurrent jurisdiction cases, or those where the TERO lacks jurisdiction, the TERO representative may assist a potential charging party (PCP) in completing the EEOC Pre-Charge Inquiry Form (PCI). The TERO may either send the PCI Form to the EEOC SLTPC/M for further processing, provide the PCP with the contact information for the nearest EEOC office, or although this is rarely done currently, the TERO may forego completing the PCI Form and assist the person in using the EEOC's Public Portal on www.eeoc.gov to begin the process with the EEOC, if feasible. [See Appendix E - Pre-Charge Inquiry Form; Instructions for Using Public Portal]

The TERO follows this process for any type of employment discrimination that falls under any of the laws enforced by the EEOC.

TEROs are not legally authorized under Title VII or the Procedural Regulations to take EEOC charges. We do not have a charge deferral or dual-filing relationship like we have with FEPAs. Therefore, the TERO may only assist PCPs in completing the Pre-Charge Inquiry Forms and getting them to the EEOC immediately as a general rule.

Special Note about the Model MOU between the EEOC and Tribes - In 2014, the Commission approved the Memorandum of Understanding (MOU) that the EEOC could enter into with Tribes. The MOU contains provisions that allows for more enhanced charge processing procedures by TEROs, **IF** they amend their Tribal ordinances to include all of the bases of discrimination that the EEOC covers. The MOU specifically identifies procedures that should occur in cases of concurrent jurisdiction, wherein the

TERO may have a 60-day period to attempt to settle matters while EEOC places the matter in suspense. The MOU also includes provisions pertaining to training, assistance and reporting with different timeframes than the general process. To date, none of the TEROs who contract with the EEOC have executed the MOU with us. [See Appendix F—Model MOU] Therefore, this enhanced process cannot be utilized, absent a fully executed MOU.

5. Quarterly Reporting: Within 15 calendar days after the end of each quarter, the TERO must submit the following information to the Contract Administering Office:

- The results of grievances/complaints processed under the tribal ordinance;
- Indian preference agreements negotiated;
- On-site inspections made;
- Tribe-wide information dissemination/conferences held;
- The referrals made to employers on/near the tribal land;
- Training provided; and
- Employment discrimination complaints handled.

The TERO must submit all required reports within the prescribed reporting schedules. [See Appendix G - TERO Quarterly Reports/Instructions.]

6. Payments, Training and Technical Assistance: EEOC's District Offices are the Contract Administering Offices and will have primary responsibility for making funding recommendations, authorizing contract payments, and providing training and technical assistance.

The SLTPC/M is to confirm payment eligibility with the TERO prior to voucher submission. After payment eligibility has been confirmed, the TERO is strongly encouraged to submit an original signed voucher to the EEOC SLTPC/M first to ensure accuracy. From there, the TERO may submit a reviewed voucher directly to the Interior Business Center (IBC), with a copy to the SLTPC/M or alternatively, upon agreement, the SLTPC/M may submit the voucher to the IBC directly for processing. Payment is generally made within 30 days of the IBC's receipt of a properly completed voucher that has been confirmed as eligible by the EEOC.

The EEOC will, within budgetary limitations, provide training and technical assistance to the TEROs to increase their capability in protecting the federal rights of Native Americans/Alaska Natives working on and near tribal lands.

7. TERO Contract Performance Reviews: TEROs will be reviewed on an ongoing basis by EEOC District Offices and informed of deficiencies relative to contract commitments so that they will have ample notice and time to correct deficiencies by the end of the contract period. The reviews should focus on the following as to whether the TERO is:

- Negotiating written Indian preference agreements with employers operating on and/or near tribal lands;
- Securing preference agreements from employers on or near tribal land.
- Continuing development of activity for public awareness of the complaint's resolution process under Tribal ordinance for alleged discrimination occurring on tribal lands and of Title VII, ADEA and ADA protection against unlawful employment discrimination both on and near the tribal land;
- Referring PCPs to the EEOC for matters potentially falling under Title VII, ADEA and ADA;
- Continuing development of referral services to provide a point of contact between employers operating on or near tribal lands and residents on tribal lands with skills required by those employers;
- Continuing on-site inspections of employer on the tribal land to assure that goals, timetables, job qualifications, religious and cultural accommodations, hiring utilization requirements imposed by tribal ordinance and preference agreements are being met;
- Submitting acceptable quarterly reports within the prescribed reporting schedules; and
- Utilizing the EEOC's Pre-Charge Inquiry Form to record information on potential charging parties and forwarding copies to the District Office.
- Conducting on-site inspections of employers on tribal land to assure that goals and timetables agreed to under Tribal Ordinance and preference agreements are being met;
- Performing tribe-wide information dissemination conferences designed to increase awareness of Indian rights with respect to employment discrimination including complaint procedures under Title VII and grievance procedures under Tribal Ordinance; and
- Securing Tribal Ordinance and preference resolutions and Title VII settlements.

If the District Office is not satisfied with performance under the contract, the TERO should be notified immediately for corrective action.

If technical assistance is needed and the District Office cannot provide it because of lack of funds, HQ SLTP should be notified immediately.

If the District Director is not satisfied with the TEROs performance after all avenues of assistance have been exhausted, a recommendation should be made to HQ SLTP as to the course of action the EEOC should take.

APPENDIX A

(Contracting Principles)

Contracting Principles and Crediting

Each year, Congress appropriates substantial amounts of money specifically for State, Local and Tribal Programs. These funds are made available to FEPAs and TEROs through contracts. For FEPAs, the EEOC contracts for charge resolutions and intake services that FEPAs perform. For TEROs, the EEOC contracts to assist them in carrying out Indian preference functions as well as counseling and referral functions in employment discrimination matters occurring on or near tribal land.

For FEPAs, to be eligible for a contract a FEPA must meet criteria set out each year in the SLTP Contracting Principles.

The Contracting Principles establish criteria that, in EEOC's view, will assure effective case processing and enforcement by FEPA's under EEOC contracts. For example, a FEPA which has administratively closed, for failure to locate or for lack of Jurisdiction, 10% or more of its shared EEOC/FEPA workload is not considered to be effective in promoting the goals of the equal employment opportunity statutes, in that it is not sufficiently producing remedies or deciding cases on the merits. A FEPA's poor performance under this provision in the one contract year would jeopardize its eligibility for a contract in a subsequent fiscal year.

Similarly, the Contracting Principles stipulate that the EEOC will not pay a FEPA for charges closed administratively in excess of 35% of the FEPA's total contract credits.

To assure cost-effectiveness in the allocation of the appropriated funds, a specific formula for determining the funding level of each FEPA contract is prescribed by the Contracting Principles. A base fixed amount per charge intake resolution accepted for contract credit and fixed amount for performing charge intake services on charges not jurisdictional with the FEPA and which EEOC will process is set by the EEOC each year in accordance with the Congressional appropriations level.

While the language of all FEPA contracts is standard, the total dollar value is not. Each FEPA's funding level is determined by the number of charge resolutions submitted by the FEPA and accepted by the EEOC for contract credit in the prior year or 1-year measurement period as well as a 3-year overall performance analysis.

FISCAL YEAR _____

CONTRACTING PRINCIPLES

FOR

STATE AND LOCAL

FAIR EMPLOYMENT PRACTICES AGENCIES

FY 2022 CONTRACTING PRINCIPLES
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EEOC's CONTRACTING PRINCIPLES

FOR

STATE AND LOCAL

FAIR EMPLOYMENT PRACTICES AGENCIES

FOR FISCAL YEAR 20

I. PURPOSE AND SCOPE

The EEOC will contract with State and, where appropriate, Local Fair Employment Practices Agencies (FEPAs) for the acceptable intake and resolution of Title VII, ADEA, ADA, and GINA charges received by the EEOC and/or a FEPA. These Contracting Principles establish the criteria and parameters of that contracting relationship. They were designed by the EEOC, in consultation with the FEPAs, to ensure an efficient, effective, and coordinated civil rights law enforcement program, and to achieve expeditious, high quality resolutions of employment discrimination charges.

A base amount for the acceptable intake and resolution of charges is set by the EEOC each year based on the amount of the appropriation by Congress. In the absence of a decrease in the appropriation, this amount shall not be less than the reimbursement rate for acceptable intake services and not less than the reimbursement rate for acceptable charge resolutions provided in the previous contract year. The EEOC may renew the contract for up to 2 additional years.

Nothing in these Contracting Principles shall be construed as limiting or otherwise discouraging any designated FEPA from applying for a charge resolution contract with the EEOC. Further, nothing in these criteria shall be construed to prohibit the EEOC from providing funds to Tribal Employment Rights Offices that conduct charge intake, counseling, and other activities related to fair employment on or near Indian reservations.

II. CRITERIA FOR ELIGIBILITY

- A. In order to be eligible to enter into a charge resolution contract with the EEOC, an agency must:
1. Be a designated FEPA as defined in 29 C.F.R. § 1601.70;
 2. Be one of the following:
 - a. A recipient of a contract in the preceding year; or
 - b. A State or Local FEPA authorized to enforce a statute prohibiting employment discrimination in the public and/or private sectors.
 3. Enter into a worksharing agreement that comports with the principles contained herein and achieves the objectives of the contracting process. The term of the agreement shall be from October 1 of the fiscal year for which the contract is signed, until September 30 of the following year, with up to two option years.
 4. Provide the EEOC with a current copy of the FEPA's enabling statute or ordinance as well as procedural regulations and policy statements once every three years with the contract application materials for the base year of the three-year contract cycle. The FEPA must also timely provide the EEOC with a copy of amendments to statutes, ordinance, procedural regulations or policy statements which occur during a contract year.
 5. Provide written affirmation that its laws, processes and procedures have produced demonstrable enforcement results, including references to specific cases that reflect enforcement activities, as follows:
 - a. The practices prohibited are comparable in scope to those practices prohibited under federal law, and that the FEPA has fully enforced its law;
 - b. The FEPA has the capability to pursue the elimination of discrimination in cases where it finds cause to credit the allegations of a charge, and to seek or provide appropriate relief consistent with applicable federal law. (NOTE: Where the State or Local law does no more than authorize the FEPA to institute criminal proceedings, it must show that it utilized its authority effectively to abolish the discrimination to qualify for Title VII and/or ADA charge resolution contract credit. To qualify for ADEA charge resolution contract credit, the FEPA's law must authorize relief beyond that of only instituting criminal proceedings.);
 - c. The FEPA includes mechanisms for monitoring and enforcing compliance of any conciliation agreement, order after public hearing, or consent order to which the FEPA is a party; and
 - d. The FEPA is producing remedies and/or deciding cases on the merits.

6. Demonstrate compatibility with the EEOC's charge processing systems and methods. In assessing compatibility, the EEOC will evaluate the FEPA's systems with regard to the following:
 - a. Implementation of an employment discrimination charge form that, within statutory limitations, is acceptable to the EEOC and the FEPA; and
 - b. Utilization of processing terminology (such as common language pertaining to types of closures) by the FEPA that is the same as or compatible with that used by the EEOC.
7. Demonstrate that it has implemented procedures that provide for professionalized intake of all valid charges the FEPA initially receives, prompt notification to respondents, resolution of charges on a current basis, determinations supported by evidence, and resolutions with appropriate remedies.
8. Demonstrate that it has achieved the following:
 - a. Training of its personnel in charge processing procedures compatible with those of the EEOC, including ADEA and ADA processing, where appropriate;
 - b. Implementation of an effective case management system that:
 - (1) Enhances quality and efficiency in the FEPA's charge resolution systems;
 - (2) Establishes annual charge resolution objectives and provides mechanisms for fixing accountability and measuring progress toward those objectives;
 - (3) Develops procedures and processes designed to reduce inventories of dual-filed charges; and
 - (4) Ensures that quality standards are met and are commensurate with the EEOC's policies and statutory responsibilities.
 - c. Implementation of a system that permits the FEPA and the EEOC to perform various functions on behalf of each other, such as accepting charges for each other, within such statutory limits as may exist.
- B. A Local FEPA is eligible for an ADEA charge resolution component in the contract if: (1) There is no state FEPA authorized to enforce an age discrimination statute; and/or (2) it received an age charge resolution contract in the prior fiscal year. If neither (1) nor (2) applies, the Local FEPA must obtain written concurrence from the primary state FEPA before requesting an ADEA charge resolution component.

- C. Civil service systems, merit boards, and personnel boards are ineligible for EEOC charge resolution contracts because there is an appearance of a conflict of interest with respect to the charge resolution lines of authority within such agencies.
- D. A FEPA that administratively resolves charges for (1) failure to locate charging party and/or (2) lack of jurisdiction, at a rate of 10% or more of all Title VII/ADEA/ADA accepted charge resolutions under, for example, the FY 2022 contract will be considered ineligible for a contract in FY 2023. If a FEPA fails to meet this eligibility standard, worksharing will not be considered and the EEOC will assert its jurisdiction over charges on the earliest possible date.
- E. Each FEPA must demonstrate through its internal employment practices, a firm commitment to equal employment opportunity. Before entering into a charge resolution contract, the EEOC will review the employment practices of the applicant FEPA to ensure compliance with applicable federal laws, regulations, and Executive Orders.
- F. Data Entry

FEPA's must make timely and accurate entries of the data into the EEOC's case management system so that the EEOC may generate management and information reports. A FEPA that fails to comply with this requirement will be ineligible for contract renewal.

G. **Minimum Contract Resolution Requirements**

- 1. Each FEPA must meet a minimum eligibility requirement of 50 accepted charge resolutions a year, except under the following conditions:
 - a. The FEPA is in its first three years of funding, and is unable to meet the minimum because of a small workload;
 - b. During the contract year, 50 or more charges were initially filed with the FEPA that were within its jurisdiction, but it failed to meet the 50-charge minimum due to waivers requested by the EEOC under a worksharing agreement; or
 - c. The FEPA is the primary state agency authorized to enforce a statute prohibiting employment discrimination in the public and/or private sectors.
 - d. The FEPA encountered circumstances not within its control that caused significant disruption to its business operation, such as extreme or extended public health or weather events.
 - e. The FEPA submitted a written justification requesting the Commission waive the minimum charge requirement and was accepted.

2. A FEPA not exempt from the 50 minimum charge resolution requirements may be considered ineligible for subsequent contracts if the FEPA failed to resolve 50 accepted resolutions during the contract year. The EEOC may reconsider its determination that a FEPA is ineligible for a contract in the next fiscal year if the FEPA submits its justification for failing to resolve 50 accepted resolutions to the EEOC prior to the end of each contract year. If the EEOC determines that the FEPA's justification warrants charge resolution contract renewal, the FEPA will be considered for a subsequent contract, on an actual production basis. The EEOC's determination in favor of continued contract eligibility will be based on factors such as the effect on the District Office's workload and whether the FEPA's resolutions are of consistently high quality and are enforceable as required in these Contracting Principles.
 3. Should the FEPA fail to submit such a justification or should the EEOC's evaluation of the FEPA's justification result in a finding that the FEPA's justification does not warrant continued funding, the FEPA will be considered ineligible for another contract until such time as it has demonstrated it has met the required minimum for at least two consecutive years.
 4. For FEPAs exempt from the 50-charge resolution requirement, in the first contract year, the FEPA will receive the minimum funding amount of not less than 50 multiplied by the charge reimbursement rate approved by the Commission for that contract year. Payment for resolutions submitted under subsequent contracts will be for actual production.
- G. A FEPA shall allocate sufficient staff resources to the completion of its charge resolution contract in order to ensure the timely resolution of charges over which it asserts initial processing jurisdiction in accordance with its worksharing agreement with the EEOC. If the FEPA cannot maintain its agreed upon initial processing responsibility during the contract period, the worksharing agreement shall be renegotiated and/or contract eligibility shall be reconsidered in relation to the workload of both the FEPA and the EEOC District Office. The FEPA will identify during the contract period any staffing changes that may materially affect its ability to meet its contract or will enhance its ability to resolve substantially more charges than those for which it originally contracted.

III. CONTRACT DEVELOPMENT AND DELIVERY REQUIREMENTS

- A. The primary consideration for determining the amount for each year of a contract will be the total number of accepted Title VII, ADEA, ADA, and GINA charge resolutions produced by the FEPA during a previous 12 month period, based on data reported from the EEOC's case management system, where applicable. Beginning in FY 2022, additional consideration may be given to the FEPA's contract performance over the previous three fiscal years.

FEPA contract amounts for each fiscal year (including any option year(s) or subsequent contract) may be based on:

1. At least the charge reimbursement rate of the prior contract year multiplied by the number of accepted Title VII, ADEA, ADA or GINA charge resolutions submitted during a 12-month measuring period of the previous year minus those administrative resolutions in excess of the 35% maximum (See Section III. B.6.b below); and
2. At least the intake services reimbursement rate of the prior contract year per accepted charge for performing acceptable intake services when a charge is not jurisdictional with the intake agency or any other FEPA, and the EEOC has jurisdiction and will process the charge. In addition, intake services credit can be given to a FEPA that takes a charge over which it does not have jurisdiction where the EEOC District Director has determined and justified that there is a need to service Charging Parties who live at great distances from an EEOC or FEPA Office.

B. Upon execution of a charge resolution contract, the following provisions will apply:

1. A FEPA that refuses to accept proper charges, discourages the filing of a proper charge, or fails to provide sufficient supporting documentation, affidavits, etc., upon receipt of charges cognizable under statutes enforced by the EEOC in accordance with these Contracting Principles, without the concurrence of the EEOC District Director, will be reviewed and subject to modification or cancellation of its contract.
2. The FEPA will provide the EEOC with a list of final actions within a time frame agreed upon by the District Director and the FEPA Director, but no later than 30 days after the resolution of each charge. In unusual circumstances, the District Director and FEPA Director may extend the 30 days for a particular charge. Upon request, or within a mutually agreeable time frame, the FEPA will forward all charge file information, or a copy of such information, within 5 workdays to the Contract Administering District Office. The EEOC District Directors may extend or reasonably alter the 5-day time frame as they deem necessary and appropriate. (For non-certified FEPAs, charge file information must be submitted within 5 days of submission of the list of final actions unless the time frame is extended or otherwise modified by the EEOC District Director.) Failure to timely submit reports and charge file information may result in the denial of contract credit for the affected resolutions.

3. Charges that have been submitted in accordance with the worksharing agreement and Section F of the Contract (Deliveries and Performance) will be eligible for contract credit if they were filed on or after the relevant date as described in the contract. For example, charges submitted in FY 22 need to have been filed on or after October 1, 2017 to be considered for contract credit unless they were reasonable cause charges that went through the hearing or litigation process, which allows for an additional year of processing.
4. **FEPA Data Entry**
 - a. Participating FEPAs will make accurate and timely data entries into the EEOC's case management system. Each FEPA is responsible for ensuring that all appropriate charge processing information is available for extraction by the appropriate individual in a timely manner, both for charges the FEPA will initially process and for charges the EEOC will initially process. Charge resolutions submitted for contract credit review will not be accepted for payment if it is determined that any required data entry has not been made by the FEPA. A determination not to award contract credit may be reversed, if deemed appropriate by the District Director after consultation with the FEPA. Contract credit will be awarded, if deemed appropriate by the District Director, if the required data is entered, and the charge is resubmitted within 10 days of the rejection notification. Contract credit will not be denied for charge data system errors beyond the control of the FEPA. In order for a charge to be eligible for credit, basic charge data must also be entered into the EEOC's case management system within 5 days of receipt of each charge. Given that most EEOC and FEPA work is performed digitally, FEPAs are strongly encouraged to include the email addresses of parties as part of the basic charge data, if feasible, once the EEOC's new case management system becomes operational.
 - b. Each FEPA is expected to reconcile its database with the EEOC's database, quarterly. If significant discrepancies are discovered as a result of a data reconciliation and cannot be readily corrected, the EEOC may require that a FEPA conduct a hard inventory of its charges. The hard inventory must be conducted in accordance with guidelines prescribed by the EEOC.
5. To ensure that FEPAs under contract with the EEOC maintain performance that is consistent with the criteria and requirements of these Contracting Principles, Worksharing Agreements and the substantial weight review procedures, the EEOC will conduct reviews and evaluations of the investigative and administrative charge processing

procedures of contract FEPAs. Such reviews may require on-site visits to the FEPAs and/or case file reviews by EEOC Headquarters State, Local and Tribal Program Analysts. Accordingly, the FEPAs are expected to comply with reasonable requests for providing and/or making available information concerning various aspects of their processes and procedures as they relate to or impact the management and disposition of the dual-filed inventory. Such information includes but is not limited to staffing information, case management printouts, charge processing documentation, and any other material and data as may be related and/or apply to the processing of dual-filed charges or the administration of the contract.

6. In order to ensure consistent levels of productivity, the District Director will review production, quarterly. The FEPA is expected to submit for contract credit at least one-fourth of the total acceptable resolutions required under the contract in each of the first three quarters.

- a. If, at the end of the third quarter the annualized linear projection of the contract's actual production indicates that the FEPA is producing at a rate which would not meet the number of charges required under the contract, the EEOC may unilaterally modify the contract price and total number of charges required, downward, to reflect the annualized charge production projection.

Upward modifications will be made only with the consent of the FEPA. When upward modifications are considered, first priority for those modifications will be given to FEPAs that have *exceeded total contracted resolutions as of June 30*, and second priority will be given to FEPAs that have not exceeded their total contracted resolutions but have completed the highest percentages of contracted resolutions by June 30.

- b. No less than 65% of any payment made for charge resolutions must be for non-administrative resolutions. Charge resolution contracts will not allow payment for charges administratively resolved in excess of 35% of the total charge resolutions and additional credits accepted for payment. The total number of charges for which payment may be rendered will be determined by dividing the number of accepted non-administrative resolutions by 65% (.65).

Administrative resolutions under this provision are as follows:

withdrawal without benefits, unable/failure to locate charging party; failure to cooperate; lack of jurisdiction; and

FEPA-issued Notices of Right-to-Sue where the CP has also requested that EEOC issue a Notice of Right-to-Sue and the charge was not submitted as an additional credit. Failure-to-Respond resolutions are not eligible for contract credit.

If, at any time during the contract year, the FEPA's administrative resolution rate exceeds 35% of the total submissions, the District Director may, if deemed appropriate, disapprove payment for any administrative resolution in excess of the 35% limitation.

Payment will be disallowed until such time as it becomes apparent that the annual administrative resolution rate will not exceed the 35% administrative resolution limitation.

- c. Acceptable charge resolutions will include the category of Additional Credits, which include the following:
 - (1) Bankruptcy (where substantial work has been completed);
 - (2) Opportunity to Correct Deficiencies;
 - (3) Unsuccessful Conciliations;
 - (4) Failure to Accept Full Relief (where substantial work has been completed);
 - (5) Charges Sent to the Office of Legal Counsel (where substantial work has been completed);
 - (6) EEOC-issued Notices of Right-to-Sue (where substantial work has been completed);
 - (7) EEOC asserts jurisdiction (where substantial work has been completed); and
 - (8) EEOC Investigation Requested (where substantial work has been completed).

FEPAs may also submit for Additional Credit those charges where the Rights-to-Sue have been requested from and issued by the FEPA; (1) substantial work has been completed, (2) the charge is not yet docketed for litigation, and (3) the charge has not been submitted as an administrative resolution.

- d. "Substantial work" means that no additional or minimal additional investigation is required for the EEOC to make a determination on the charge. The EEOC District Director is solely responsible for determining whether substantial work has been conducted. The District Director may consult with the FEPA Director, as appropriate, before rendering his/her decision.

- e. Charges filed by multiple charging parties against the same respondent, or by one charging party against multiple divisions of the same respondent, with substantially similar issues and bases, requiring one primary investigation, shall normally be credited as one charge and one resolution. The District Director, in consultation with the FEPA Director, may grant credit for more than one charge based on his/her assessment of the time and resources required to resolve the charges.

IV. PAYMENT PROCESS

A FEPA may receive an advance of 50% of its charge resolution contract. Subsequent payments will be based on the number of intake services and charge resolutions actually credited by the EEOC for payment under the contract.

V. WORKSHARING AGREEMENT

- A. A worksharing agreement will seek to allocate the dual-filed workload on the basis of respective capability.
- B. At a minimum, the worksharing agreement must contain the provisions set forth in the EEOC/FEPA Model Worksharing Agreement.
- C. Notwithstanding the FEPA's capability to process all new charges it receives, the worksharing agreement will note that, where EEOC will initially process a charge, the FEPA waives its right to initially process that charge for 60 days after filing.

VI. DISTRICT DIRECTOR'S ROLE

The District Director is the Contract Monitor for all contracts and will have the primary responsibility for:

- A. Recommending the issuance and modification of charge processing contracts and contract levels;
- B. Providing local program and management assistance to FEPAs;
- C. Reviewing and accepting contracted resolutions;
- D. Monitoring contract production and rejection rates;
- E. Conducting negotiations of worksharing agreements;

- F. Managing the deferral relationship;
- G. Preparing the official receiving report; and
- H. Meeting with FEPAs on a regular basis.

VII. TRAINING AND TECHNICAL ASSISTANCE

The EEOC will endeavor to provide training and technical assistance, within budgetary limitations, to contracted FEPAs to enhance their capability to resolve dual-filed charges.

VIII. MAINTENANCE OF EFFORT

As a condition of contracting with the EEOC, the FEPA or the governmental body that provides its funds, will not reduce the FEPA's resources in anticipation of or as a result of the EEOC contract funds. The FEPA's capacity to maintain a charge inventory [as specified in Section II.A.8.b.] is the criterion by which compliance with this clause will be determined. Any reduction in the FEPA's funding from its funding source, restrictions placed on the use of its funds or changes in the FEPA's law or regulations, that impact on its ability to perform under or meet its contracted obligations, may constitute a violation of this clause and must be immediately reported by the FEPA Director to the EEOC. FEPAs are required to report funding and staffing changes as they occur or are anticipated.

APPENDIX B

(FEPA Request for Information)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Field Programs

State, Local and Tribal Programs

Fiscal Year 20__

Request for Information

For A FEP Agency Charge Resolution Contract

Including Options for Fiscal Years 20__ and 20__

From

(EEOC District Office)

and

(FEP Agency Name)

PART I - GENERAL INFORMATION

1. Name of FEP Agency Head:

Title of FEP Agency Head:

FEP Agency Street Address:

City:

State:

Zip Code:

Telephone Number (Area Code):

Email Address:

2. (a) What is the total annual appropriation of State or Local government funds to the FEP Agency?

\$ _____

- (b) What is the term of the current appropriation for the FEP Agency?

FROM : _____
 MONTH DAY YEAR

TO : _____
 MONTH DAY YEAR

- (c) Does the current appropriation represent a reduction in the total annual appropriation of State or Local government funds to the FEP Agency compared to the previous appropriation?

() Yes () No If Yes, enter amount by which the appropriated funds were reduced:

\$ _____

3. Please provide as an **attachment** to this RFI a copy of the complete text of (a), (b), and (c) below, with each legislative and procedural change in the previous twelve (12) months clearly highlighted, and provide explanatory documentation regarding the changes which you believe will be helpful in understanding the impact of the change(s).

- (a) Enabling Statute(s) or Ordinance(s)
(b) Relevant Regulations
(c) Charge Processing Procedures, if applicable.

PART II - THRESHOLD ELIGIBILITY CRITERIA

FY 20__ charge resolution contract eligibility will be conditioned on the FEP Agency meeting the threshold eligibility criteria contained in the Contracting Principles related to the State and Local program. In addition to meeting the threshold eligibility criteria in the Principles and specifically affirming those criteria set forth below, **it is required that a valid Worksharing Agreement with the appropriate EEOC District Office be in effect** in order for the EEOC to contract with an FEP Agency.

Please check each box that applies to the applicant FEPA and/or its operations or practices:

1. The Agency is a designated FEP Agency. ()
2. The practices prohibited by the State or Local FEP Agency are comparable in scope to those practices prohibited under federal law, and the FEP Agency has fully enforced its law. ()
3. The FEP Agency obtains remedies and decides cases on the merits. ()
4. In all cases where the FEP Agency has found cause to credit the allegations of a charge, the agency has the capability to pursue the elimination of the discrimination and seek or provide appropriate relief. ()
5. The FEP Agency includes mechanisms for monitoring and enforcing compliance in any conciliation agreement, order after public hearing, or consent order to which the FEP Agency is a party. ()
6. The FEP Agency has in place an effective case management system in accordance with Section II.A.8.b. of the Contracting Principles. ()
7. If applying for an age charge resolution component, the enabling statute/ordinance authorizes relief beyond that of only instituting criminal proceedings.
() N/A or ()

NOTE: In order for an FEP Agency to qualify for an ADEA charge resolution component in its contract, the law must authorize relief beyond that of only instituting criminal proceedings. If unable to confirm the statement in number 7, please provide an explanation as an **attachment** to this RFI.

8. A Local FEP Agency seeking eligibility for an ADEA component in the contract must complete this section:

(a) Is there a State FEPA authorized to enforce an age discrimination statute?

() Yes () No

(b) Did the applicant FEPA's prior FY 202__ charge resolution contract include ADEA charges? () Yes () No

If (a) is **No**, i.e., there is no ADEA coverage by a State FEPA, the Local FEP Agency is eligible for an ADEA component in current FY 20__ under this provision. If (a) is **Yes** and (b) is **No**, the Local FEP Agency must obtain written concurrence from the primary State FEP Agency before requesting an ADEA component, and the written concurrence must be provided as an **attachment** to the FEP Agency's RFI. If (b) is **Yes**, the Local FEP Agency is eligible for an ADEA component without the written concurrence of the State FEP Agency.

9. For the period May 1, 2020 through April 30, 2021 *[using FY2022 as an example]*, provide the number of charges litigated and/or the number of hearings conducted to enforce cause findings covered by Title VII, ADEA, and ADA.

	<u>Charges Litigated</u>	<u>Hearings Conducted</u>
Number of Charges	_____	_____
Total Monetary Relief	\$ _____	\$ _____

10. For the period May 1, 2020 through April 30, 2021 *[using FY2022 as an example]*, provide the number of successful conciliations and the number of settlements covered by Title VII, the ADEA, and/or the ADA:

	<u>Successful Conciliations</u>	<u>Settlements</u>
Number of Charges	_____	_____
Total Monetary Relief	\$ _____	\$ _____

11. The FEP Agency is **not** a merit board, personnel board or civil service system? ☐ **Confirmed**

PART III - 50 MINIMUM ELIGIBILITY CRITERION

1. Will the FEP Agency process at least 50 accepted charge resolutions under the FY 20__ (current FY) contract by September 30, 20__ (current FY)?

☐ **Yes** ☐ **No**

If **No**, answer Line 2. If **Yes**, go to Part IV.

2. Is the FEP Agency in its first year of contracting or is it the primary state agency?

☐ **Yes** Exempt from 50 charge resolution requirement.

☐ **No** Not exempt from 50 charge resolution requirement.

If **No**, Line 3 must be answered. If **Yes**, go to Part IV.

3. Will the FEP Agency fail to resolve at least 50 or more acceptable charges under the current FY 20__ charge resolution contract solely because it waived charges to EEOC for initial processing?

☐ **Yes** Exempt from 50 accepted charges resolution requirement. Indicate number of charges waived to EEOC below and go to Part IV.

☐ **No** Not exempt from the 50 charge requirement. (A written request must be submitted below with this RFI for exemption of the 50-charge requirement. See Line 4 below.)

4. **Submit a written justification below as to the reasons that the Commission should exempt the 50-charge requirement for your agency for a current FY 20__ contract.**

PART IV - FY 20__ CONTRACT REQUEST

1. FY 20__ CHARGE RESOLUTION CONTRACT REQUEST

PRODUCTION DURING MEASUREMENT PERIOD

(May 1, 20__ – April 30, 20__)

OR

FEPA REQUEST IN CONSULTATION WITH EEOC AND

IN CONSIDERATION OF THREE-YEAR PERFORMANCE ANALYSIS: _____

(NOTE: Measurement Period production excludes dual-filed FEP Agency resolutions submitted prior to May 1, 20__ and pending review in the EEOC district office as of May 1, 20__, and includes dual-filed FEP Agency charges resolved on or after May 1, 20__ that are submitted to and pending review in the EEOC district office as of April 30, 20__, if any.)

2. FY 202_ INTAKE SERVICES CONTRACT REQUEST

NUMBER OF CHARGES ACCEPTED FOR

INTAKE SERVICES CONTRACT CREDIT

BY EEOC FROM MAY 1, 20__ TO APRIL 30, 20__

OR

FEPA REQUEST IN CONSULTATION WITH EEOC AND

IN CONSIDERATION OF THREE-YEAR PERFORMANCE ANALYSIS: _____

The responses contained herein have been developed by the FEP Agency in consultation with the appropriate EEOC District Office. All differences, unless otherwise noted in writing, have been resolved. The FEP Agency is aware that this information, in conjunction with the information provided by the EEOC District Office, will be used as the basis for the recommendation and misrepresentations contained herein may result in a recommendation for no contract, or termination of the contract.

DATE

FOR THE FEP AGENCY (SIGNATURE)

PART V - EEOC

DISTRICT OFFICE CERTIFICATION

Does the District Director's evaluation of the FEP Agency's processes, procedures, and performance under the prior FY 20__ contract, as well as justifications submitted in response to this RFI, indicate that the FEP Agency should receive an FY 20__ Charge Resolution Contract?

() **Yes** () **No**

If **No**, submit a written recommendation as to the reasons you believe that the FEP Agency should not receive a contract, as well as any written position from the FEP Agency to the contrary, as an **attachment** to this RFI, and submit the RFI with attachment(s), to State, Local and Tribal Programs. The District Director should notify the FEP Agency in writing that (s)he is not recommending the FEP Agency for an FY 20__ contract.

1. I have determined that the information submitted by the FEP Agency and used to prepare responses contained in the foregoing pages of this document is accurate to the best of my knowledge.
2. Based upon my assessment of the FEP Agency's responses, practices and past history of resolving charges, I certify that the FEP Agency meets the standards for participation in the Commission's contract program.

CHECK EITHER 3 OR 4

- 3.____ I am recommending the applicant FEP Agency for a FY 20__ charge resolution contract at the level reflected in **Part IV** of this RFI.
- 4.____ I am recommending the applicant FEP Agency for a FY 20__ charge resolution contract at the level I have specified in the attachment to this RFI.

DATE

EEOC DISTRICT DIRECTOR

APPENDIX C

(Model Worksharing Agreement)

EEOC/FEPA MODEL WORKSHARING AGREEMENT

WORKSHARING AGREEMENT

BETWEEN

(Full Name of FEPA)

And

THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

(Name of EEOC District Office)

FOR FISCAL YEAR 20__

I. INTRODUCTION

- A. The (full name of FEPA) , hereinafter referred to as the FEPA, has jurisdiction over allegations of employment discrimination filed against employers with (numbers) or more employees occurring within (geographic boundary) based on (list all bases including those for disability, as appropriate.) pursuant to (list all relevant statutes including those for disability, as appropriate) ...

The U.S. Equal Employment Opportunity Commission, hereinafter referred to as the EEOC, has jurisdiction over allegations of employment discrimination occurring throughout the United States where such charges are based on race, color, religion, sex (including pregnancy, gender identity and sexual orientation), or national origin, all pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e et seq.) (hereinafter referred to as Title VII). The EEOC also has jurisdiction to investigate and determine charges of discrimination based on age (40 or older) under the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 621 et seq.)(ADEA); for unequal wages based on sex under the Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d)) (EPA); over allegations of employment discrimination based on disability

pursuant to Title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.)(ADA); and over the use or acquisition of genetic information as the basis for employment decisions pursuant to Title II of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. § 2000ff et seq.)(GINA). Section 709 (b) of Title VII and the procedural regulations, 29 C.F.R. § 1601.13(c), and §1626.10 for ADEA cases, provide for the EEOC to enter into worksharing agreements with FEPAs, such that FEPAs can receive pay to investigate some EEOC claims.

- B. In recognition of, and to the extent of the common jurisdiction and goals of the two Agencies, and in consideration of the mutual promises and covenants contained herein, the FEPA and the EEOC hereby agree to the terms of this Worksharing Agreement (Agreement), which is designed to provide individuals with an efficient procedure for obtaining redress for their grievances under appropriate (indicate city, state, etc.) and Federal laws.

II. FILING OF CHARGES OF DISCRIMINATION

- A. In order to facilitate the assertion of employment rights, the EEOC and the FEPA each designate the other as its agent for the purpose of receiving and drafting charges, including those that are not jurisdictional with the agency that initially receives the charges. The EEOC's receipt of charges on the FEPA's behalf will automatically initiate the proceedings of both the EEOC and the FEPA for the purposes of Section 706(c) and (e)(1) of Title VII. This delegation of authority to receive charges does not include the right of one agency to determine the jurisdiction of the other agency over a charge. Charges can be transferred from one agency to another in accordance with the terms of this Agreement.
- B. The FEPA shall take all charges alleging a violation of Title VII, ADEA, EPA, GINA or the ADA where both the FEPA and the EEOC have mutual jurisdiction, or where the EEOC only has jurisdiction, so long as the allegations meet the minimum requirements of the applicable statute, and for charges specified in Section III. A. 1. below, refer them to the EEOC for initial processing.
- C. Each agency will inform individuals of their rights to file charges directly with the other agency and or assist any person alleging employment discrimination to draft a charge in a manner that will satisfy the requirements of both agencies to the extent of their common jurisdiction. Normally, once an agency begins an investigation, it resolves the charge. Charges may be transferred between the EEOC and the FEPA in accordance with the terms of this Agreement. Each agency will advise

charging parties that charges will be resolved by the agency taking the charge except when the agency taking the charge lacks jurisdiction or when the charge is to be transferred in accordance with Section III of this Agreement.

- D. For charges that are to be dual filed, each agency will use the EEOC Charge Form 5 (or alternatively, an employment discrimination charge form which within statutory limitations, is acceptable in form and content to the EEOC and the FEPA) to draft charges. When a charge is taken based on disability, the nature of the disability shall not be disclosed on the face of the charge. *(If applicable state statute or local ordinance requires such disclosures, this sentence may be deleted.)*

(More specific instructions depending on District Office/FEPA procedures should also be included here.)

- E. Within ten calendar days of receipt, each agency agrees that it will notify both Charging Party and Respondent of the dual-filed nature of each such charge it receives for initial processing and explain the rights and responsibilities of the parties under the applicable Federal, State, or Local statutes.

III. DIVISION OF INITIAL CHARGE-HANDLING RESPONSIBILITIES

The primary responsibility for handling charges at the intake and investigation stages⁴ between the FEPA and the EEOC will be divided as follows:

- A. The EEOC will investigate all Title VII, ADA, GINA, and ADEA charges that it originally receives, and the FEPA will investigate all charges that it originally receives under its respective state or local statutes.
 - 1. For charges originally received by the EEOC and/or to be initially investigated by the EEOC, the FEPA waives its right of exclusive jurisdiction to initially investigate such charges for a period of 60 days for the purpose of allowing the EEOC to proceed immediately with the investigation of such charges before the 61st day.

In addition, the EEOC will initially investigate the following charges:

⁴ The terms "investigation" or "investigate" for purposes of this Agreement includes all intake and investigative evidence gathering actions, communications and correspondence related to inquiries and filed charges including interviews of potential claimants and witnesses; review and assessment of charges; jurisdiction and duplication of charge assessments; contract credit requests/assessments, etc. This does not include matters at the litigation stage.

- a. All Title VII, ADA, and concurrent Title VII/ADA charges jurisdictional with the FEPA and received by the FEPA 240 days or more after the date of violation;
- b. All disability-based charges that may not be resolved by the FEPA in a manner consistent with the ADA.
- c. All concurrent Title VII/EPA charges;
- d. All charges against the FEPA or its parent organization where such parent organization exercises direct or indirect control over the charge decision-making process;
- e. All charges filed by EEOC Commissioners;
- f. All charges filed by EEOC Office Directors under EPA and/or ADEA;
- g. Charges also covered by the Immigration Reform and Control Act;
- h. Complaints referred to the EEOC by the U.S. Department of Justice; the U.S. Department of Labor, Office of Federal Contract Compliance Programs; or Federal fund-granting agencies under 29 CFR §§ 1640, 1641, and 1691;
- i. Any charge where the EEOC is a party to a Conciliation Agreement or a Consent Decree that is relevant to the charge;
- j. Any charge alleging retaliation for filing a charge with the EEOC or for cooperating with the EEOC;
- k. All charges against Respondents that are designated for initial investigation by the EEOC in a supplementary memorandum to this Agreement; and
- l. All charges filed under GINA.

(Add additional provisions specific to District Office here)

- 2. The FEPA will initially investigate the following types of charges under its respective state or local statutes:
 - a. Any charge alleging retaliation for filing a charge with the FEPA or cooperating with the FEPA;

b. Any charge where the FEPA is a party to a Conciliation Agreement that is relevant to the charge. The FEPA will notify the EEOC on a quarterly basis of all Conciliation Agreements;

c. All charges that allege more than one basis of discrimination where at least one basis is not covered by the laws enforced by the EEOC but is covered by the state or local laws enforced by the FEPA, or where the EEOC is mandated by federal court decision or by internal administrative EEOC policy to dismiss the charge, but the FEPA is not required to dismiss that charge under state or local law;

d. All charges against Respondents that are designated for initial investigation by the FEPA in a supplementary memorandum to this Agreement agreed to by the EEOC; and

e. All disability-based charges against Respondents over which the EEOC does not have jurisdiction.

(Add additional provisions specific to the FEPA here.)

- B. Notwithstanding any other provision of the Agreement, the FEPA or the EEOC may request to be granted the right to initially investigate any charge subject to agreement of the other agency. Such variations shall not be inconsistent with the objectives of this Worksharing Agreement or the Contracting Principles.
- C. The EEOC and the FEPA may agree to cooperate and investigate cases together for the good of the public. The EEOC District Director and the FEPA Executive Director/Administrator will reduce to writing how the agencies will work together, setting forth the division of labor and how the agencies will proceed to jointly investigate. The charging parties (if any) and respondents will be informed of the division of labor and the intent to investigate together to ensure transparency in the investigative process to better serve the public. In the event of a dispute in this subsection, the agencies will resolve the dispute under Section VI.D that governs resolving disputes. Both agencies agree to represent a united front to the relevant employer and the employer's employees and applicants for employment involved in the matter.

IV. EXCHANGE OF INFORMATION

- A. In furtherance of cooperative and coordinated efforts envisioned by Title VII and the procedural regulations, the FEPA and the EEOC will make available for inspection and copying to appropriate

officials from the other agency, charge processing information that may assist the agency in carrying out its investigative responsibilities, as is practicable. Such information may include case information contained in investigative files and other material or data as may be related to the processing of dual filed charges or administration of the contract. Each agency is permitted to withhold, in its discretion, deliberative, confidential, and otherwise privileged information. The receiving agency will not provide the shared information to third parties without the express written consent of the agency that provided the information originally, except as required by law. The agency accepting information agrees to comply with any confidentiality requirements imposed on the agency providing the information to the extent possible. With respect to all information obtained from the EEOC, the FEPA agrees to observe the confidentiality provisions of Title VII, ADA, ADEA, GINA, and the Privacy Act. The parties understand that this provision is for investigative purposes only and any information obtained cannot be used outside the investigative process.

- B. In order to expedite the resolution of charges or facilitate the working of this Agreement, either agency may request or permit personnel of the other agency to accompany or to observe its personnel when investigating a charge.

V. RESOLUTION OF CHARGES

- A. Both agencies will adhere to the procedures set out in the EEOC's State and Local Handbook, including current revisions.
- B. For the purpose of according substantial weight to the FEPA's final finding and order, the FEPA must submit to the EEOC copies of all documents pertinent to conducting a substantial weight review; the evaluation will be designed to determine whether the following items have been addressed in a manner sufficient to satisfy the EEOC requirements; including, but not limited to:
 - 1. jurisdictional requirements,
 - 2. investigation and resolution of all relevant issues alleging personal harm with appropriate documentation and using proper theory,
 - 3. relief, if appropriate,

4. mechanisms for monitoring and enforcing compliance with all terms of conciliation agreements, orders after public hearing, or consent orders to which the FEPA is a party.
- C. In order to be eligible for contract credit and/or payment, submissions must meet all the substantive and administrative requirements as stipulated in the Contracting Principles.
- D. For the purposes of determining eligibility for contract payment, a final action is defined as the point after which Charging Party has no administrative recourse, appeal, or other avenue of redress available under applicable State and Local statutes.

VI. IMPLEMENTATION OF THE WORKSHARING AGREEMENT

- A. Each agency will designate a person as liaison official for the other agency to contact concerning the day-to-day implementation for the Agreement. The liaison official for the FEPA will be (name of person). The liaison official for the EEOC will be (name of person).
- B. The agencies will monitor the allocation of charge-processing responsibilities as set forth in the Agreement. Where it appears that the overall projection appears inappropriate, the appropriate portions of this Agreement will be modified to ensure full utilization of the investigation and resolution capacities of the FEPA and rapid redress for allegations of unlawful employment discrimination.
- C. The agencies agree to work together in furtherance of the EEOC's current Strategic Plan objectives when assessing the allocation of charges under the Agreement and to cooperate in compliance and enforcement efforts as well as training, outreach and technical assistance efforts encompassed by the Strategic Plan.
- D. If a dispute regarding the implementation or application of this Agreement cannot be resolved by the FEPA Executive Director/Administrator and the EEOC District Office Director, the issues will be reduced to writing by both parties and forwarded to the EEOC Director of the Office of Field Programs (OFP) who may request additional information from the FEPA Executive Director/Administrator or the EEOC District Director. The Director of OFP's determination is final and may include, among other things, rescission of this Agreement and contract for services. This dispute resolution mechanism is the exclusive remedy for all disputes arising under this Agreement.

- E. This Agreement shall operate from the first day of October 20__ to the thirtieth day of September 20__ and may be renewed or modified by mutual consent of the parties.

I have read the foregoing Worksharing Agreement and I accept and agree to the provisions contained therein.

Date: _____

FEPA Signature

FEPA Title

FEPA Name

Date: _____

EEOC Signature

EEOC Title

EEOC District Name

APPENDIX D

(TERO Request for Information)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF FIELD PROGRAMS

FISCAL YEAR 20__

REQUEST FOR INFORMATION (RFI) for
TRIBAL EMPLOYMENT RIGHTS OFFICES (TEROs)

Name of TERO _____

Full Address _____

Name of Director _____

Telephone Number _____

Email Address: _____

CONTRACT ELIGIBILITY CRITERIA

In order to be eligible for a Fiscal Year (FY) 20__ contract, each TERO with a contract in prior FY 20__, during the time period from October 1, 20__ through September 30, 20__, must respond to each of the questions below relating to the accomplishment of the Qualification Criteria.

1. During FY 20__, was the TERO in compliance with the requirements listed under the TERO Contract Qualifying Criteria (see Enclosure 2)?

___ Yes ___ No

2. Has the TERO submitted all required reports for FY 20__? ___ Yes ___ No

NOTE: All reports due under contract for FY 20__ must have been received by the District Office in order for this criterion to be answered "Yes". If all required reports have not been received to date, the TERO is not eligible for a FY 20__ contract.

TERO CERTIFICATION

I hereby certify that the information contained in this response is accurate and correct.

Date

Tribal Representative

EEOC DISTRICT DIRECTOR CERTIFICATION AND RECOMMENDATION

Based on the foregoing information, as well as my own personal knowledge of the applicant's performance during FY 20__, I certify that the TERO (☐ **did** / ☐ **did not**) satisfactorily accomplish the activities specified herein during FY 20__.

I (☐ **recommend** / ☐ **do not recommend**) a contract for this TERO for FY 20__.

Date

Director
EEOC District Office

APPENDIX E

(Pre-Charge Inquiry Form;
Instructions for Using Public Portal)



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PRE-CHARGE INQUIRY

For Official Use Only – Inquiry Number: _____

Thank you for contacting the U.S. Equal Employment Opportunity Commission ("EEOC"). The information you give us on this Pre-Charge Inquiry (Form 290A) will help us assist you and determine if your concerns are covered by the employment discrimination laws we enforce. Answer all questions completely and briefly. Please write clearly.

After completing this Pre-Charge Inquiry, return it immediately to the EEOC office identified in the cover letter to this Pre-Charge Inquiry, or to the receptionist if you are completing this Pre-Charge Inquiry in an EEOC office.

Please note: This Pre-Charge Inquiry is not a Charge of Discrimination.

The Pre-Charge Inquiry is not intended for use by applicants for federal jobs or employees of the US government. See http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm for discrimination complaints in federal jobs.

Personal Information	First Name: _____ MI: _____ Last Name: _____
	Address: _____ Apt.: _____
	City: _____ County: _____ State: _____ Zip Code: _____
	Email: _____ Home Phone: (____) _____ Cell: (____) _____
	What is the best way to reach you? _____
	What are the best days and times to reach you? _____
	Date of Birth: ____/____/____ Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> X (unspecified or another gender identity)
	Do you need language assistance? <input type="checkbox"/> Yes <input type="checkbox"/> No
	If so, what do you need? _____
	General information about you that will help us to serve all individuals better:
i. Are you Hispanic or Latino? <input type="checkbox"/> Yes <input type="checkbox"/> No	
ii. What is your race? Choose all that apply: <input type="checkbox"/> American Indian or Alaskan Native <input type="checkbox"/> Asian	
<input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White	
iii. What is your National Origin or ancestry? _____	
Who can we contact if we are unable to reach you?	Name: _____ Relationship: _____
	Address: _____ City: _____ State: _____ Zip Code: _____
	Email: _____ Home Phone: (____) _____ Cell: (____) _____

THIS PRE-CHARGE INQUIRY IS NOT A CHARGE OF DISCRIMINATION

Who do you think discriminated against you?	<input type="checkbox"/> Employer <input type="checkbox"/> Union <input type="checkbox"/> Employment Agency <input type="checkbox"/> Other Name of organization where you work(ed) or applied to: _____ Address: _____ Suite: _____ City: _____ County: _____ State: _____ Zip Code: _____ Organization Headquarters, if different from above: Name: _____ Address: _____ Suite: _____ City: _____ County: _____ State: _____ Zip Code: _____ Name of Human Resources Director or Owner: _____ Email: _____ Phone: (____) _____ How many employees (estimated) does the organization have at all locations? Check one: <input type="checkbox"/> Less than 15 <input type="checkbox"/> 15-100 <input type="checkbox"/> 101-200 <input type="checkbox"/> 201-500 <input type="checkbox"/> More than 500
Why do you think you were discriminated against?	You believe you were discriminated against because of: <input type="checkbox"/> Race – Your race: _____ <input type="checkbox"/> Color – Your color: _____ <input type="checkbox"/> Religion – Your religion: _____ <input type="checkbox"/> Sex (including pregnancy, gender identity, or sexual orientation) <input type="checkbox"/> National origin – Your national origin: _____ <input type="checkbox"/> Age (40 or older) – Your age at the time of the job action: _____ <input type="checkbox"/> Disability – Check all that apply: <input type="checkbox"/> You have a disability <input type="checkbox"/> You had a disability in the past <input type="checkbox"/> You don't have a disability but you are treated as if you have a disability <input type="checkbox"/> You are closely related to or associated with a person with a disability What is the disability? _____ Is your employer aware of the disability? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, how? _____ <input type="checkbox"/> Genetic information (including your genetic information, your family medical history, or your participation in genetic services like counseling, education, or testing) <input type="checkbox"/> Retaliation – Check all that apply: <input type="checkbox"/> You filed a charge of job discrimination <input type="checkbox"/> You contacted a government agency to complain about job discrimination <input type="checkbox"/> You complained to your employer about job discrimination <input type="checkbox"/> You helped or were a witness in someone else's complaint about job discrimination <input type="checkbox"/> You requested an accommodation for your disability or religion <input type="checkbox"/> None of the above – The reason for this inquiry: _____

THIS PRE-CHARGE INQUIRY IS NOT A CHARGE OF DISCRIMINATION

What happened to you that you think was discriminatory and when did it happen?	<p>EXAMPLES: I was denied an accommodation I needed to perform my job; I was fired because I was pregnant; I was laid off because of my age.</p> <p>Date: ____/____/____ Action: _____</p> <p>Date: ____/____/____ Action: _____</p> <p>Name and Title of Person(s) Responsible: _____</p>
What reason(s) were you given for this job action?	<p>Reason(s) _____</p> <p>Who told you this? _____ Job Title: _____</p>
<p align="center">Was another person in the same or similar situation treated the same, better, or worse than you? EXAMPLES: Who else applied for the same job? Who else had the same attendance record? Who else had the same performance appraisal?</p>	
Who was treated BETTER than you?	<p>1. Name: _____ Job Title: _____</p> <p>Email/Phone: _____ Check how they are different from you:</p> <p><input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> Religion <input type="checkbox"/> Sex <input type="checkbox"/> National Origin <input type="checkbox"/> Age <input type="checkbox"/> Disability</p> <p>How were they treated better? _____</p> <p>_____ Date: ____/____/____</p> <p>2. Name: _____ Job Title: _____</p> <p>Email/Phone: _____ Check how they are different from you:</p> <p><input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> Religion <input type="checkbox"/> Sex <input type="checkbox"/> National Origin <input type="checkbox"/> Age <input type="checkbox"/> Disability</p> <p>How were they treated better? _____</p> <p>_____ Date: ____/____/____</p>
Who was treated WORSE than you?	<p>Name: _____ Job Title: _____</p> <p>Email/Phone: _____ Check how they are different from you:</p> <p><input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> Religion <input type="checkbox"/> Sex <input type="checkbox"/> National Origin <input type="checkbox"/> Age <input type="checkbox"/> Disability</p> <p>How were they treated worse? _____</p> <p>_____ Date: ____/____/____</p>
Who was treated the SAME as you?	<p>Name: _____ Job Title: _____</p> <p>Email/Phone: _____ Check how they are different from you:</p> <p><input type="checkbox"/> Race <input type="checkbox"/> Color <input type="checkbox"/> Religion <input type="checkbox"/> Sex <input type="checkbox"/> National Origin <input type="checkbox"/> Age <input type="checkbox"/> Disability</p> <p>How were they treated the same? _____</p> <p>_____ Date: ____/____/____</p>

THIS PRE-CHARGE INQUIRY IS NOT A CHARGE OF DISCRIMINATION



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

WHAT YOU SHOULD KNOW ABOUT FILING AN EEOC CHARGE

WHAT DOES THE EEOC DO?

The EEOC is a law enforcement agency that investigates or looks into claims that employers, employment agencies or labor organizations discriminated against employees or applicants because of their race, color, religion, sex (including pregnancy, transgender status, and sexual orientation), national origin, age (40 or older), disability, or genetic information. The EEOC often tries to settle charges with the help of a mediator. Sometimes, the EEOC takes cases to court. The EEOC does not charge a fee to investigate, mediate, or litigate charges. The EEOC also educates the public about job discrimination.

HOW TO FILE A CHARGE OF EMPLOYMENT DISCRIMINATION

If you think you have experienced job discrimination, we encourage you to use our Online Public Portal at <https://publicportal.eeoc.gov>. To use the online system, you must have Internet access and an email address. EEOC's Public Portal asks you a few questions to help determine whether EEOC is the right federal agency to handle your complaint. If so, you can then submit an inquiry online and schedule an interview with an EEOC representative to discuss the details of your situation. In our experience, an interview helps individuals make more informed decisions about whether to file a charge. A Charge of Discrimination can be completed through our online system after we interview you. Once a Charge of Discrimination has been signed, you can upload any evidence you have to your case.

You may also file a charge of employment discrimination at the EEOC office closest to where you live or work, or at any one of the EEOC's 53 field offices. Offices may not always be able to interview you on the same day you walk-in. Please check <https://www.eeoc.gov/field/> for information about the walk-in hours of the office closest to you.

WHAT IS A CHARGE?

A charge is a signed, written complaint about a job action you believe was based on race, color, religion, sex, national origin, age, disability, or genetic information that asks the EEOC or a state or local government agency with similar laws to take action to remedy the discrimination. You have the right to file a charge of job discrimination to keep your right to file in federal court. After your interview, EEOC will help you prepare your charge and sign it electronically.

IS THERE A TIME LIMIT TO FILE A CHARGE?

You have either 180 or 300 days from the day you knew about the job action to file a charge. It depends on whether the employer is located in an area where a state or local government agency has laws similar to the EEOC's laws. We can help you figure out how much time you have. Act quickly to keep your rights by signing and filing a timely charge. Your signed charge is filed when EEOC receives it.

WHAT TO DO IF YOU WOULD LIKE ASSISTANCE DURING YOUR INTERVIEW

You can bring your lawyer to your interview, although you don't have to hire a lawyer to file a charge.

The EEOC is unable to provide a lawyer for you and cannot pay for the cost of your lawyer. An interview may be conducted via telephone or in-person. If you need an accommodation or assistance during the interview, like an accommodation for a disability, or assistance with a sign language interpreter or another language interpreter, let us know ahead of time so we can arrange for the accommodation or interpreter to be available during the interview.

WHAT HAPPENS WHEN YOU FILE A CHARGE?

When you file a charge, the EEOC must give the employer accused of discrimination a copy of the charge, which includes your name and your claims of discrimination. If you contact the EEOC but decide not to file a charge, we will not tell the employer that you contacted us. If you do not file a charge, you will not be able to file suit in federal court based on the laws we enforce, with one exception: individuals with Equal Pay Act (EPA) claims may go to court without filing a charge but must do so within two years of the negative job action. If the EEOC does not have jurisdiction, or if your charge is untimely, we will close the investigation of your charge quickly. We may also close your charge if we decide that it is unlikely we will be able to determine that the law was violated. Then we will give you a notice of your right to file suit in federal court within 90 days. If we do not close your charge quickly, we may send it to mediation or to investigation.

EEOC typically receives about 70,000 charges of discrimination from workers out of more than 700,000 contacts seeking information and assistance every year. Although EEOC is able to address thousands of complaints, the agency cannot remedy every potential violation of the federal discrimination laws. Recognizing this, Congress gave workers the right to file lawsuits in court after first allowing EEOC the opportunity to investigate the charge.

WHAT IS MEDIATION?

Before we look into your claims, the EEOC sometimes asks if you and the employer would like to try to settle your case with the help of a mediator. Both you and the employer must agree to mediate for mediation to occur. The mediator does not decide who is right or wrong. Instead, the mediator tries to help you and the employer settle your claims. What you talk about in mediation is private. If you and the employer agree to settle your case, the EEOC will close your case. If you and the employer do not agree to settle your case, we will send your case to investigation.

If your charge is not otherwise resolved, the EEOC will assign an investigator as soon as we can to look into your claims. The investigator is neutral and does not take sides. The investigator may ask you for the names of people who have information about your claims of discrimination and may talk to some or all of them. You should give the investigator anything you have in writing that helps to prove your claims. The investigator will usually ask the employer to tell their side of the story as well and ask for your response. We may also request a written position statement from the employer. If so, you may request to have a copy of the employer's position statement. You will have an opportunity to respond to the position statement.

We will review the information you give us, and the information provided by the employer to make a decision in your case. If the information we have does appear to be in violation of the laws enforced by EEOC, the EEOC may stop investigating and close your case. The time it takes to resolve a charge can vary greatly, depending on the facts of the case and the size of our workload. It may take six to nine months or even longer to process your charge.

CAN YOU FILE A LAWSUIT BEFORE WE FINISH OUR INVESTIGATION?

If you want to file a lawsuit in federal court before we finish our investigation, you may ask us in writing for a notice of your right to sue. If you ask more than 180 days after filing a charge, the law requires us to give it to you. If you ask before 180 days have passed, we can give you the notice only if we cannot finish our investigation within 180 days. In most cases, once we give you a notice of your right to sue, we close the case. You have to file a charge of job discrimination to keep your right to file in federal court (EPA/ADEA). If you file an age discrimination charge, however, you can file a suit in court without the notice 60 days after filing a charge. An individual with an EPA claim may go to court directly without filing a charge.

WHAT HAPPENS AFTER THE INVESTIGATION?

After we finish looking into your claims, we let you and the employer know what we decide. Sometimes, the information is not enough to show that the employer violated the law. In that case, we will dismiss your charge and give you a notice of your right to file suit in federal court within 90 days. If you do not file a suit within 90 days, you will lose your right to sue in court. When the information shows that the employer violated the law, we try to settle the case in conciliation.

WHAT IS CONCILIATION?

When the EEOC determines that the employer violated the law, we invite you and the employer to try to settle the case. If the EEOC, you, and the employer agree on how to settle your case, we will close the case. If the EEOC, you, and the employer do not agree, we will decide whether to file a lawsuit in federal court or whether to provide you with a notice of your right to sue so that you can file your own lawsuit. You then have 90 days to file suit in federal court.

WHEN DOES THE EEOC LITIGATE?

In some cases, when the EEOC determines that the employer violated the law and we have been unable to reach a voluntary settlement, we file a lawsuit in federal court. When the EEOC decides whether to file a lawsuit, we look at how serious the violation is, what the legal issues are, and whether other people would benefit from the lawsuit. If we decide not to sue in your case, we will give you a right to sue letter so that you can file your own lawsuit in court. You then have 90 days to file suit.

IS RETALIATION AGAINST THE LAW?

It is against the law for an employer to retaliate against you because you complained about job discrimination, because you gave evidence in a job discrimination matter, or because you filed a charge of job discrimination with the EEOC. If this happens to you, you should contact us as soon as possible to talk about whether you should file a retaliation charge.

KEEP US INFORMED

Once you file a charge with the EEOC, you must tell us if you move or get a new phone number or email address. We may need to talk to you to get more information. If the EEOC cannot reach you to get necessary information, your charge may be dismissed.

KEEP YOUR DOCUMENTS — BOTH PAPER AND ELECTRONIC

If you file a charge, you must keep anything that might be evidence related to your charge. We are required by the courts to ensure that all potentially relevant information is retained. Lost evidence may make it difficult to prove your claim. Keep electronic evidence like text messages, social media posts, photos, emails, voicemails, videos, calendars, and even memory on laptops, tablets and cellphones. Do not delete your computer hard drive, electronic tablet, or cell phone. Do not change or remove Internet posts, without retaining an electronic copy.

Also keep paper evidence like pay stubs, work schedules, employee manuals, letters, memos, your notes, pictures, drawings, charts, and calendars. Even if you are not sure electronic or paper information is relevant to your discrimination claim, please do not delete it or throw it away.

During an investigation, the EEOC will not disclose information that you provide to the public.

LOOK FOR A JOB IF YOU ARE OUT OF WORK

If you lost your job or were not hired because of job discrimination, you may be able to recover the pay or wages you lost. But you must show that you looked for another job to receive lost wages. To prove you searched for work, you must keep copies of all electronic and paper information, such as applications, resumes, letters, emails, or other evidence of your job search. If you find a new job but it pays less than the job you lost, you may be entitled to the difference in pay. To show the difference in pay, you must keep electronic and paper evidence such as offer letters, pay stubs, and work schedules. Keep all evidence of your job search even if you find another job.

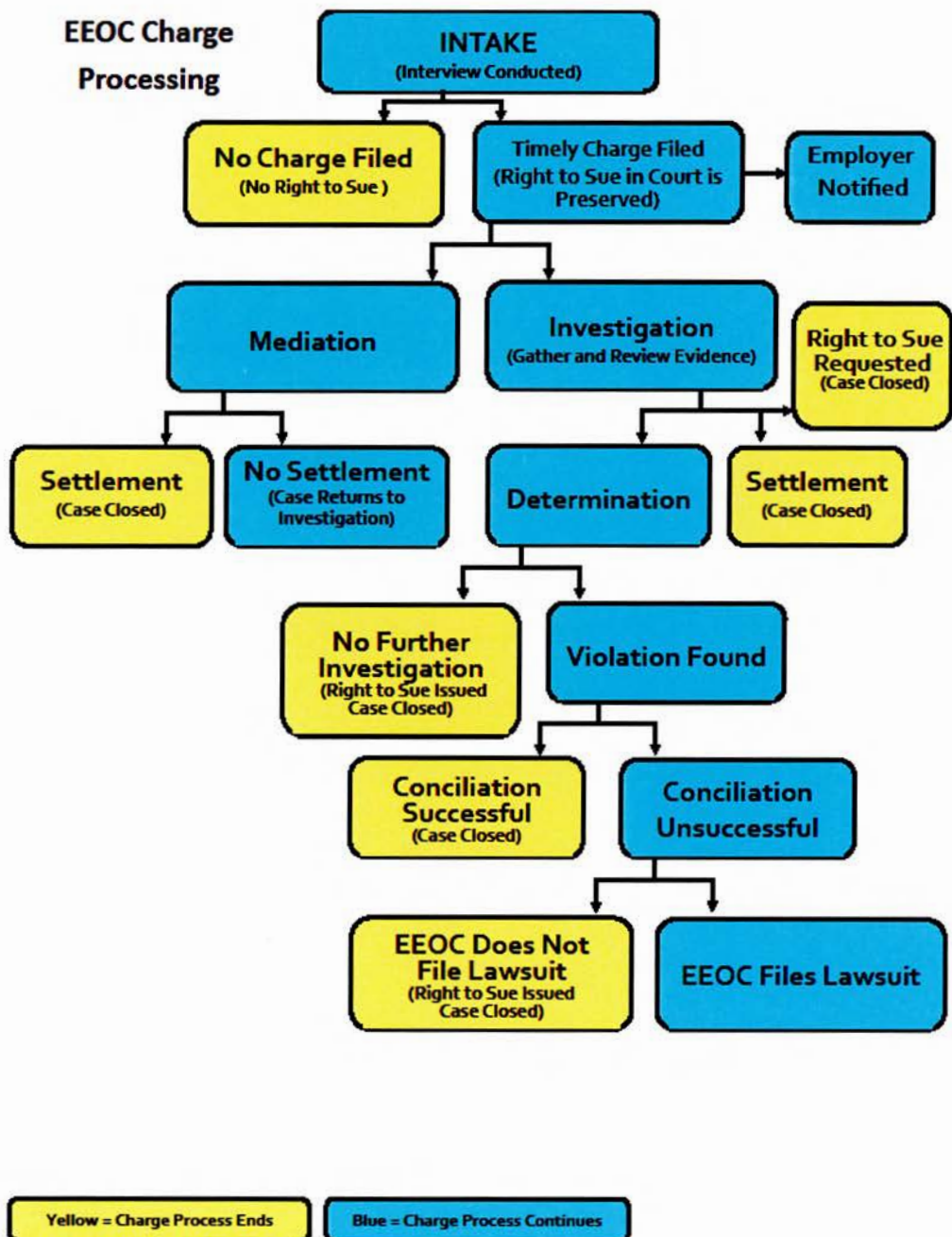
DO YOU HAVE MORE QUESTIONS?

You can find the answers to many of your questions on our website, www.eeoc.gov, including whether the EEOC is the right agency to assist you. For more information about filing a charge, see www.eeoc.gov/filing-charge-discrimination. For more information about wage claims, www.eeoc.gov/equal-paycompensation-discrimination.

DON'T MISS THE FILING DEADLINE

Go to our Online Public Portal at
<https://publicportal.eeoc.gov>

or call 1-800-800-4000 (Voice), or use our sign language
access line 1-844-234-5122 (ASL Video Phone)
www.eeoc.gov



APPENDIX F

(Model MOU)



**MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. EQUAL
EMPLOYMENT OPPORTUNITY COMMISSION AND THE _____ NATION/TRIBE**

This Memorandum of Understanding (MOU) is between the U.S. Equal Employment Opportunity Commission (EEOC) and the _____ Nation/ Tribe (Tribe).

WHEREAS:

The Tribe has enacted an ordinance prohibiting employment discrimination based on [race*, color, national origin, gender, religion, disability, age, and genetic information] that applies to all employers subject to the Tribe's jurisdiction, including the Tribal government and tribal enterprises, and the Tribe has established a Tribal Employment Rights Office (TERO) with powers and resources to enforce the Tribe's ordinance prohibiting employment discrimination; and

EEOC and the _____ Tribe both have responsibility for enforcing statutes and ordinances prohibiting employment discrimination based on [race, color, national origin, gender, religion, disability, age, and genetic information]; and

The respective jurisdictions of EEOC and the Tribe to enforce their statutes and ordinances against employers located within the exterior boundaries of the _____ Reservation overlap, such that effective and comprehensive enforcement of the prohibitions against employment discrimination will best be achieved by cooperation between EEOC and the Tribe; and

It is the desire of EEOC and the Tribe to work together cooperatively in order to maximize the enforcement of the prohibitions against employment discrimination regarding all employers.

- It is understood that the term "race" is subject to the exception for Indian preference provided at Section 703(i).

THEREFORE, EEOC AND THE _____ TRIBE DO HEREBY ENTER INTO
THE FOLLOWING MEMORANDUM OF UNDERSTANDING:

I. CHARGE PROCESSING

**A. Charges Filed with EEOC or With Both EEOC and the TERO Over Which EEOC
Has Jurisdiction**

1. If a charge, other than a charge where further investigation will probably result in a finding that reasonable cause exists to believe the charge is true (commonly referred to by EEOC as an "A charge"), is filed by an Indian with EEOC alleging activity involving employment within the exterior boundaries of the _____ Reservation that, if true, would violate the TERO ordinance and the laws enforced by EEOC, then the relevant EEOC Director, upon obtaining the written consent of Charging Party, shall send a copy of the charge to the TERO and provide the TERO 60 days in which to attempt to settle (resolve through agreement) the charge. EEOC shall, as resources permit, provide appropriate assistance and support to the TERO during this 60-day period.

2. If, prior to the end of the 60-day period, the TERO has settled the charge, it shall immediately provide EEOC with a copy of the settlement agreement for review.
3. If, at the end of the 60-day period, the TERO has been unable to settle the charge, and if the charge was filed only with EEOC, the TERO shall return the charge to EEOC which shall process the charge through its regular charge processing procedures.
4. If, at the end of the 60 day period, the TERO has been unable to settle the charge, and the charge was also filed with the TERO by an individual claiming to be aggrieved, EEOC will postpone processing the charge for a reasonable period of time while the TERO processes the charge in accordance with the procedures contained in the ordinance. Upon completion of the TERO process, the TERO will submit the charge file to EEOC for review. If the TERO finds cause on the charge, it will coordinate informal settlement discussions with EEOC.
5. At all times EEOC shall have a right to review all materials in the TERO file on a charge referred to it by EEOC.
6. Upon request, the individual filing the charge is entitled to receive a Notice of Right to Sue from the EEOC after 180 days following the filing of the charge.
7. Nothing in this MOU shall prevent the TERO from filing a charge under the Tribe's ordinance, either on the TERO's own behalf or on behalf of a person claiming to be aggrieved, pursuant to the TERO's authority to file such a charge.

B. Charges Against Employers Over Which EEOC Does Not Have Jurisdiction

1. If EEOC receives a charge against an employer over which EEOC determines that it does not have jurisdiction, but over which the TERO might have jurisdiction, EEOC shall advise Charging Party of the TERO's ordinance and, with the consent of Charging Party, refer the charge to the TERO.
2. The TERO shall proceed in evaluating and acting on the charge pursuant to its procedures. Nothing in this MOU obligates the TERO to process a charge referred by EEOC under section B.

C. Miscellaneous

1. EEOC and the TERO agree to treat all information exchanged in accordance with this MOU with the same confidentiality and privacy protections that the agency providing the data is required to provide. EEOC and the TERO will enter into a separate confidentiality agreement.
2. If the TERO receives information about an employer over which EEOC has jurisdiction, and which the TERO has reason to believe may be engaging in systemic employment discrimination on or off of the Reservation, or if the TERO is aware that EEOC is pursuing a systemic charge against that employer, the TERO shall provide EEOC with all relevant information regarding the charge. Provided that, nothing in this MOU shall prohibit the TERO from independently pursuing a charge against said employer.

II. TRAINING, ASSISTANCE, AND REPORTING

A. Training

1. The Tribe agrees to participate in a training program to be provided by EEOC for Tribes that have entered into MOUs with EEOC, as EEOC's resources permit. The training will cover topics such as conducting investigations and legal updates on anti-discrimination laws. EEOC will not charge the Tribal participants for the training, but the Tribe shall be responsible for the travel and per diem costs of its employees.
2. EEOC agrees that staff at the appropriate EEOC field office will participate in a training session about the Tribe's history and culture and the scope of the Tribe's jurisdiction as an enforcement agency, as EEOC's resources permit. The training session will be presented by the Tribe and the Council for Tribal Employment Rights (CTER) at no charge to EEOC.
3. EEOC and the Tribe agree to meet no less than annually to review their relationship under this MOU.

4. As EEOC's resources permit, EEOC agrees to send a representative to CTER's annual convention and its legal up-date seminar. At said meetings, EEOC, CTER, and the Tribes that have entered into MOUs with EEOC shall meet to discuss their relationships and ways to improve them.

B. Assistance

1. EEOC agrees to designate an experienced investigator from the EEOC Field Office that services the area in which the Tribe's Reservation is located as a resource to the TERO staff on investigating and enforcing the Tribe's anti-discrimination ordinance. Consistent with the investigator's responsibilities to EEOC, the investigator will be available to assist the TERO on an as-needed basis.
2. EEOC shall, as its resources permit, provide the TERO with such support and assistance as the TERO requests in processing charges under the MOU.

C. Reporting -- The Tribe agrees to provide EEOC with quarterly reports, within 15 days after the end of each calendar quarter, providing the following information:

1. The names of all cases referred to it by EEOC, the activities the TERO undertook on each case and the disposition of each case, and
2. A list of the charges filed with the TERO, the activities the TERO undertook on each, and the disposition of each charge.

III. TERMINATION

Each Party may terminate this MOU, for any reason or no reason, by providing the other Party with 30 days' written notice. Provided, however, that if EEOC wishes to terminate this MOU for the tribe's failure to participate in training programs, to appropriately use the EEOC mentor, or to submit required reports, EEOC will provide prior written notice to the tribe, c/o

_____ and provide 60 days for the tribe to comply with the requirements of the MOU.

AGREED TO THIS __ DAY OF _____, 20__:

FOR EEOC

FOR THE _____ TRIBE

TITLE

APPENDIX G

(TERO Quarterly Report)

TERO Quarterly Report—Under development

APPENDIX H

Frequently Asked Questions-TEROs and Tribes

Questions About EEOC Jurisdiction

Q1. Does the EEOC have jurisdiction over complaints of employment discrimination against federally recognized American Indian tribes?

A. The EEOC has jurisdiction over two types of employment discrimination charges against federally recognized tribes: (1) age discrimination charges under the ADEA by individuals age 40 and older; and (2) gender-based pay discrimination charges under the Equal Pay Act, unless the application of these statutes would infringe on treaty rights or tribal sovereignty.

The EEOC does not have jurisdiction over charges of employment discrimination against federally recognized tribes if the alleged discrimination is based on race, national origin, sex, color, or religion (under Title VII), disability (under the ADA), or genetic information (under GINA).

However, it's important to note that the EEOC has jurisdiction to enforce all of our laws listed above with respect to private employers operating on Tribal lands, as explained in more detail Q2, below.

Q2. Does the EEOC have jurisdiction over complaints that a private employer engaged in employment discrimination if the private employer operates on a reservation or has a contract with a Tribe?

A. The EEOC has jurisdiction over private employers operating on a reservation or that contract with a Tribe, depending on the size of the employer:

- The EEOC has jurisdiction over private employers with at least one employee regarding claims of gender-based pay discrimination under the EPA.
- The EEOC has jurisdiction over private employers with at least 15 employees regarding claims of race, color, religion, sex, or national origin discrimination under Title VII, claims of disability discrimination under the ADA, and claims of genetic information discrimination under GINA.
- The EEOC has jurisdiction over private employers with at least 20 employees regarding claims of age discrimination under the ADEA by individuals who are 40 or older.

Q3. Does the EEOC have jurisdiction over complaints of employment discrimination by a business owned by a Tribe?

A. The EEOC may have jurisdiction over a business that is owned by a Tribe, but not integrated with and controlled by the Tribe, and that is not performing essentially governmental functions on behalf of the Tribe.

Q4. What should I do if I don't know who owns the business that employs me or where I want to work, or if I don't know if a Tribe is federally recognized?

A. It may be difficult for employees or applicants for employment to determine if Tribes, Tribally owned businesses, or private businesses on reservations fall under the EEOC's jurisdiction. Employees and applicants are welcome to file charges if they are uncertain about whether the employer is covered. The EEOC will determine whether or not it has coverage over the employer.

If you wish to proceed with filing a charge with the EEOC, we can provide you with information on how to start the process.

Instructions on how to file a charge with the EEOC can be found here: [How to File a Charge of Employment Discrimination](#)

You can access the EEOC's Portal here: [Link to EEOC Portal](#)

**** Go to this link to find the contact information for each district's state, local and tribal coordinator: [State, Local and Tribal Programs Coordinators / Program Managers | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)**

**** Here's a link to the Tribal programs webpage: [Tribal Programs | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)**

Questions about TEROs

Q5. What is a TERO (Tribal Employment Rights Office)?

A. A Tribal Employment Rights Office or TERO is the unit within the Tribal government structure that monitors and enforces Tribal employment rights ordinances and facilitates the employment of American Indians and Alaska Natives in businesses and industries operating within the geographical boundaries of the reservation.

TEROs may also serve as the referral and placement resource between employers and residents of the reservations and negotiate Indian preference agreements.

Q6. What does it mean for a TERO to be "under contract" with the EEOC?

A. The EEOC contracts with eligible TEROs to enhance the employment opportunities of American Indians and Alaska Natives by supporting the work of a TERO.

TERO activities include:

- Negotiating written Indian preference agreements with employers operating on or near the reservation.
- Providing activities to enhance public awareness of the complaints-resolution process under Tribal law for alleged discrimination occurring on the reservation, and of protection against unlawful employment discrimination under applicable federal employment discrimination laws both on and off the reservation.
- Providing referral services to connect employers operating on or near the reservation with Tribal members who have skills sought by those employers.
- Conducting on-site inspections of employers on the reservation to ensure that goals and timetables agreed to under Tribal ordinances and preference agreements are being met.

Q7. How can a TERO enter into a contract with the EEOC?

A. A TERO should contact the State, Local and Tribal Program Manager/Coordinator in the nearest EEOC District Office to express interest in entering into a contract with EEOC. The criteria for TEROs to be eligible for EEOC contracts are sent annually to EEOC District Directors and State, Local and Tribal Program Managers/Coordinators.

Q8. How does the EEOC work with TEROs?

A. The EEOC works together with TEROs to protect the employment rights of American Indians and Alaska Natives, and to prevent discrimination through education and cooperation. TEROs promote employment opportunities for Tribal members on the reservation and the EEOC supports their efforts. The EEOC provides training on the employment discrimination laws it enforces, how to recognize potential discrimination issues and the overall EEOC intake process to the TEROs who contract with the EEOC. Training is conducted through videos, classroom settings, conferences and other meetings each year.

Q9. Can I file an EEOC charge with a TERO?

A. No, you cannot file an EEOC charge with a TERO, but they may be helpful in providing information about how to file a charge.

Q10. How can a TERO help me?

A. The TERO may assist you with filing an EEOC charge if you are an employee or applicant for employment who believes an employer has subjected you to employment discrimination. The TERO may also attempt to resolve your complaint with the employer, regardless of whether it is a private employer or a state or local government employer, on your behalf before forwarding your complaint to the EEOC. TEROs may also serve as referral and placement resource between Tribal members on the reservation and employers.

APPENDIX I

(SLTP Forms)

SUBSTANTIAL WEIGHT REVIEW	EEOC Charge No.:
Charging Party:	FEP Agency:
Respondent:	Number:
Required Documents in File?	IMS Data Correctly Entered?

Type of SWR Review:

☐ **Cause / No Cause Review:** for checked items below, provide an explanation as required.

- ☐ Issues Accepted Investigated
- ☐ Appropriate Theory(ies) & Legal Principles Applied
- ☐ Evidence Reviewed (Relevant witness(es) testimony secured; Policies examined and results)
- ☐ Comparative Analysis (Treatment of CP v. others similarly situated; Comparative documentary evidence obtained)
- ☐ Facts in Dispute Resolved; Facts Support Conclusions Reached

☐ **Merit Resolution:** for checked items below, indicate in narrative form, issues, documents, interviews, etc., delineate those accepted, evidence secured and outcomes.

- ☐ Negotiated Settlement (EEOC charge withdrawn; Relief Obtained)
- ☐ Withdrawal with Benefits (Non-coercion; EEOC charge withdrawn; Benefits Obtained)
- ☐ Conciliation Agreement (EEOC charge withdrawn, if applicable; Terms of agreement met; Relief Obtained)
- ☐ Unsuccessful Conciliation (Findings supported by evidence; Administrative process exhausted; FEPA not pursuing in state court)
- ☐ ADEA 7(d) Conciliation Agreement (EEOC charge withdrawn; Relief Obtained)

☐ **Administrative Closure:** for checked items below, indicate in narrative form, documents, efforts made etc., delineate and outcomes.

- ☐ Withdrawal without Benefits (Evidence on non-coercion; EEOC charge withdrawn)
- ☐ Right to Sue Requested
- ☐ Lack of Jurisdiction (Timeliness; Standing; No employer-employee relationship; # of employees)
- ☐ Unable to Locate Charging Party (Reasonable effort made; Dismissal Notice sent)
- ☐ Failure to Cooperate (Written notification sent; Number of days allowed for response)
- ☐ Failure to Accept Relief (Respondent's offer in writing; Charging party's declination in writing; EEOC concurred)
- ☐ Out of Business/Bankruptcy (Successorship properly pursued; Bankruptcy procedures followed)

Explanation/Summary:

EEOC FORM ### (01/21)

<<OFFICE LETTERHEAD>>

Charge No: [XXX-XXXX-XXXXX]

[CHARGING PARTY NAME]
[CHARGING PARTY ADDRESS]

Charging Party

[RESPONDENT REPRESENTATIVE NAME]
[RESPONDENT REPRESENTATIVE ADDRESS]

Respondent

ACKNOWLEDGMENT OF SETTLEMENT

In view of the agreement reached between Charging Party and respondent, the Equal Employment Opportunity Commission (EEOC) will discontinue processing the above referenced charge.

This action does not reflect any judgment by the EEOC as to the merits of the charge or the terms of the settlement agreement to which the EEOC is not a party.

Further, the EEOC does not waive its right to process any other charge, including a charge filed by a Commissioner of the EEOC, or to institute a directed Age Discrimination in Employment Act (ADEA) or directed Equal Pay Act (EPA) investigation of Respondent.

On Behalf of the Commission:

Date

[NAME]
Director

CC: [CHARGING PARTY ATTORNEY NAME]
[CHARGING PARTY ATTORNEY ADDRESS]

<<OFFICE LETTERHEAD>>

EEOC No: <<XXX-XXXX-XXXX>>

FEPA No:

<<CP Name>> Charging Party

<<CP Address>>

<<CP City, State, Zipcode>>

<<R Name>> Respondent

<<R Address>>

<<R City, State, Zipcode>>

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning of the statutes enforced by the Commission. Timeliness, deferral and all other jurisdictional requirements have been met. Substantial weight has been accorded to the findings of the <<**FEPA name**>>.

The record presented by the Agency includes evidence that the matter in controversy has been successfully settled.

This concludes the Commission's processing of the charge subject to the performance by Respondent of the promises and representations contained in the order or agreement.

The parties are reminded that federal law prohibits retaliation against individuals who have exercised their right to protest acts they believe violate the laws enforced by the Commission. Retaliation against individuals who have participated in the processing of charges or complaints by the Commission is also prohibited. These protections extend to the individuals regardless of the Commission's determination concerning the merits of the charge.

On Behalf of the Commission:

Date

<<Name>>

Director

CC:

<<CP Attorney Name>>

<<CP Attorney Law Firm Name>>

<<CP Attorney Address>>

<<CP Attorney City, State, Zip code>>

<<R Attorney Name>>

<<R Attorney Law Firm Name>>

<<R Attorney Address>>

<<R Attorney City, State, Zip code>>

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
TRANSMITTAL OF EEOC CASE TO THE DEPARTMENT OF JUSTICE**

(The attached charge involves state/local government or political subdivisions, including public educational institutions.)

TO: U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION
EMPLOYMENT LITIGATION SECTION, PHB
950 PENNSYLVANIA AVE., NW
WASHINGTON, D.C. 20530

FROM: (District name/address)

**THE ATTACHED ☐ CHARGE ☐ THIRD PARTY CHARGE
IS REFERRED FOR A DETERMINATION TO SUE PURSUANT TO:**

☐ Section 706 (f)(1) or Section 706

☐ Section 706 (f)(2)

EEOC CHARGE NUMBER

NAME/ADDRESS OF CHARGING PARTY TO WHOM NOTICE IS TO BE ADDRESSED

NAME/ADDRESS OF AGGRIEVED PERSON TO WHOM NOTICE IS TO BE SENT

NAME/ADDRESS OF RESPONDENT(S)

DIRECTOR/REGIONAL ATTORNEY RECOMMENDATIONS/REMARKS

DATE

TELEPHONE NUMBER

DIRECTOR (Typed Name)

SIGNATURE

FOR DEPARTMENT OF JUSTICE USE

DATE EEOC FORM 256 RECEIVED

DATE NOTICE ISSUED TO PARTIES

STATUS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION TRANSMITTAL TO DEPARTMENT OF JUSTICE REQUEST FOR NOTICE OF RIGHT TO SUE <i>(The attached charge involves state/local government or political subdivisions, including public education institutions.)</i>									
TO: DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION EMPLOYMENT LITIGATION SECTION, PHB 950 PENNSYLVANIA AVE., NW WASHINGTON, D.C. 20530					FROM (Area or District Name/Address): «FIELD168» «FIELD169» «FIELD170» «FIELD171» OFFICE WHERE CASE FILE IS LOCATED: (If different from above) «FIELD207» «FIELD208» «FIELD209» «FIELD210»				
NOTICE OF RIGHT TO SUE TO BE ISSUED BASED ON THE INFORMATION PROVIDED BELOW									
NAME/ADDRESS OF CHARGING PARTY TO WHOM NOTICE IS TO BE ADDRESSED: «FIELD14» «FIELD15» «FIELD16» «FIELD17» <div style="display: flex; align-items: center; margin-top: 10px;"> <small>Charging party has filed the charge on behalf of an aggrieved person whose identity is confidential (29 CFR 1601.7(a)).</small> </div>					IF CHARGE WAS THIRD PARTY CHARGE, NAME AND ADDRESS OF AGGRIEVED PERSON TO WHOM NOTICE IS TO BE SENT: 				
NAME/ADDRESS OF RESPONDENT(S) AND EEOC CHARGE NUMBER(S) «FIELD18» «FIELD157» «FIELD2» «FIELD19» «FIELD20» «FIELD21»									
ATTACHED IS A REQUEST FOR NOTICE OF RIGHT TO SUE FOR THE ABOVE CHARGE(S) AND OTHER ATTACHED DOCUMENTS AS INDICATED BELOW: LETTER OF REQUEST FROM: <input type="checkbox"/> CHARGING PARTY DATED: «FIELD61» <input type="checkbox"/> ATTORNEY FOR CHARGING PARTY DATED: «FIELD62» ATTACHMENTS: <input type="checkbox"/> ORIGINAL CHARGE <input type="checkbox"/> AMENDED CHARGE <input type="checkbox"/> CAUSE DETERMINATION (If used) DATED: «FIELD174» THE CHARGE WAS FILED (Filing Date): «FIELD98» <div style="display: flex; align-items: center; margin-top: 5px;"> <input type="checkbox"/> Less than 180 days have elapsed since the filing date. I certify that the Commission's processing of this charge will not be completed within 180 days from the date shown above. </div> <div style="display: flex; align-items: center; margin-top: 5px;"> <input type="checkbox"/> Please indicate on the Notice of Right To Sue that the Commission will continue to process this charge. </div>									
NAME AND TELEPHONE NUMBER OF CONTACT PERSON (List FTS No.)								DATE	
«FIELD94», «FIELD12»									
TYPED NAME OF EEOC OFFICIAL						SIGNATURE			
«FIELD211»									
DEPARTMENT OF JUSTICE USE ONLY									
<input type="checkbox"/> RS		<input type="checkbox"/> OMITATTY#			<input type="checkbox"/> OCT			<input type="checkbox"/> FILE	
1	2	3	4	5	6	7	8	9	10
REMARKS 									



U.S. Equal Employment Opportunity Commission
«Field168»

«Field169»
«Field170»
«Field171»
«Field204»
«Field206»
«Field205»
1-800-669-4000

<<Add Charging Party Name>>
Respondent: «Field18»
EEOC No: «Field157»

«Field14»
«Field15»
«Field16»
«Field17»

Dear «Field134» «Field135»:

The Equal Employment Opportunity Commission has received your request for a Notice of Right to Sue (Notice) in the above referenced charge.

Your request has been forwarded to the U.S. Department of Justice (DOJ) for action. The DOJ will act on your request and issue the Notice directly to you.

If you have any questions, please call this office at «Field204».

On behalf of the Commission:

Date

«Field211»
Director

cc: «Field137»
«Field138»
«Field139»
«Field140»



U.S. Equal Employment Opportunity Commission
«Field168»

«Field169»
«Field170»
«Field171»
«Field204»
«Field206»
«Field205»
1-800-669-4000

<<Add Charging Party Name>>

Respondent: «Field18»

EEOC No: «Field157»

Chief, Employment Litigation Section
Civil Rights Division
Department of Justice
Washington, DC 20530

To Whom it May Concern:

The person described in the enclosed EEOC Form 257 (and its attachments) has requested a Notice of Right to Sue in the above cited charge under Title VII of the Civil Rights Act of 1964 (Title VII), the Americans with Disabilities Act (ADA) or the Genetic Information Nondiscrimination Act (GINA).

If you have any questions, please call this office at «Field204».

On behalf of the Commission:

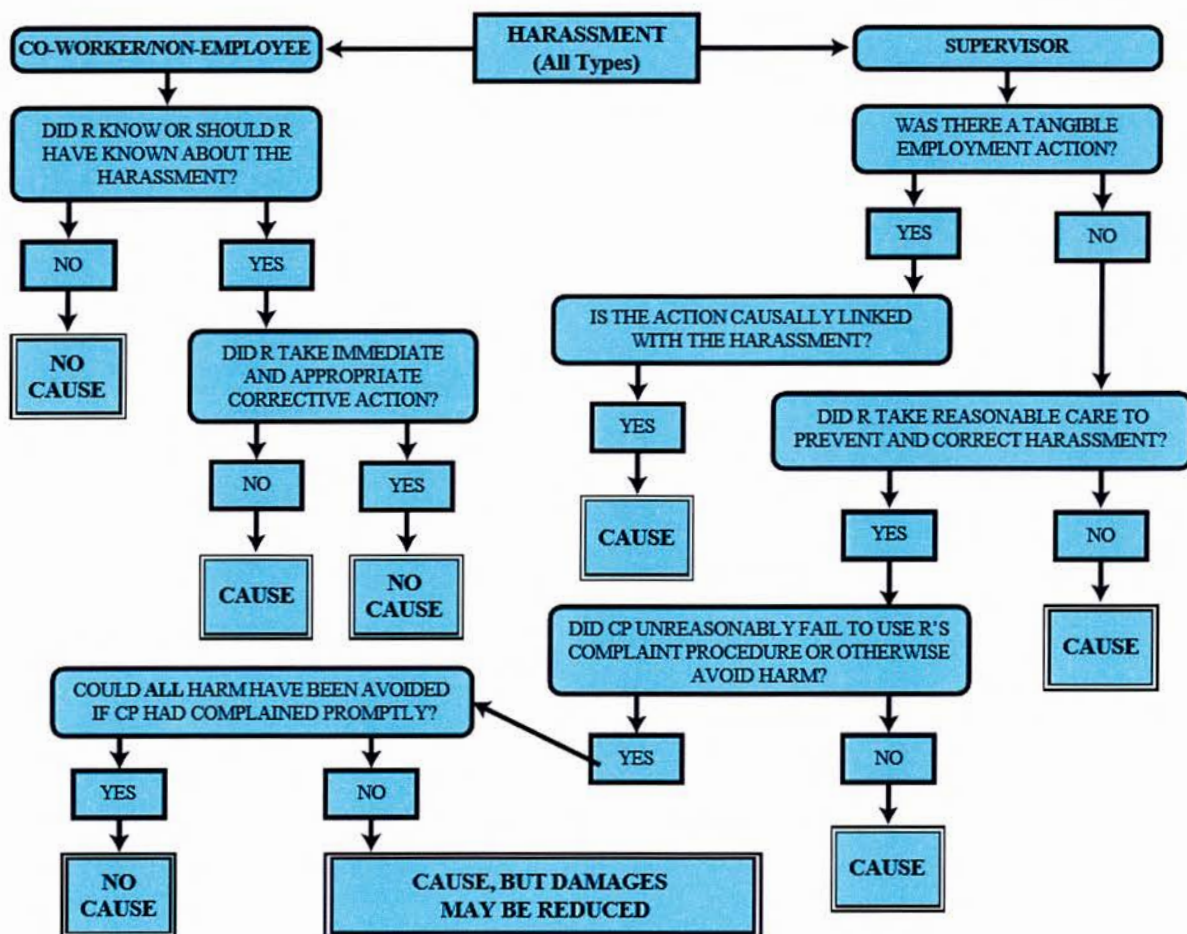
Date

«Field211»
Director

Enclosures:
EEOC Form 257 and
Attachments|

APPENDIX J

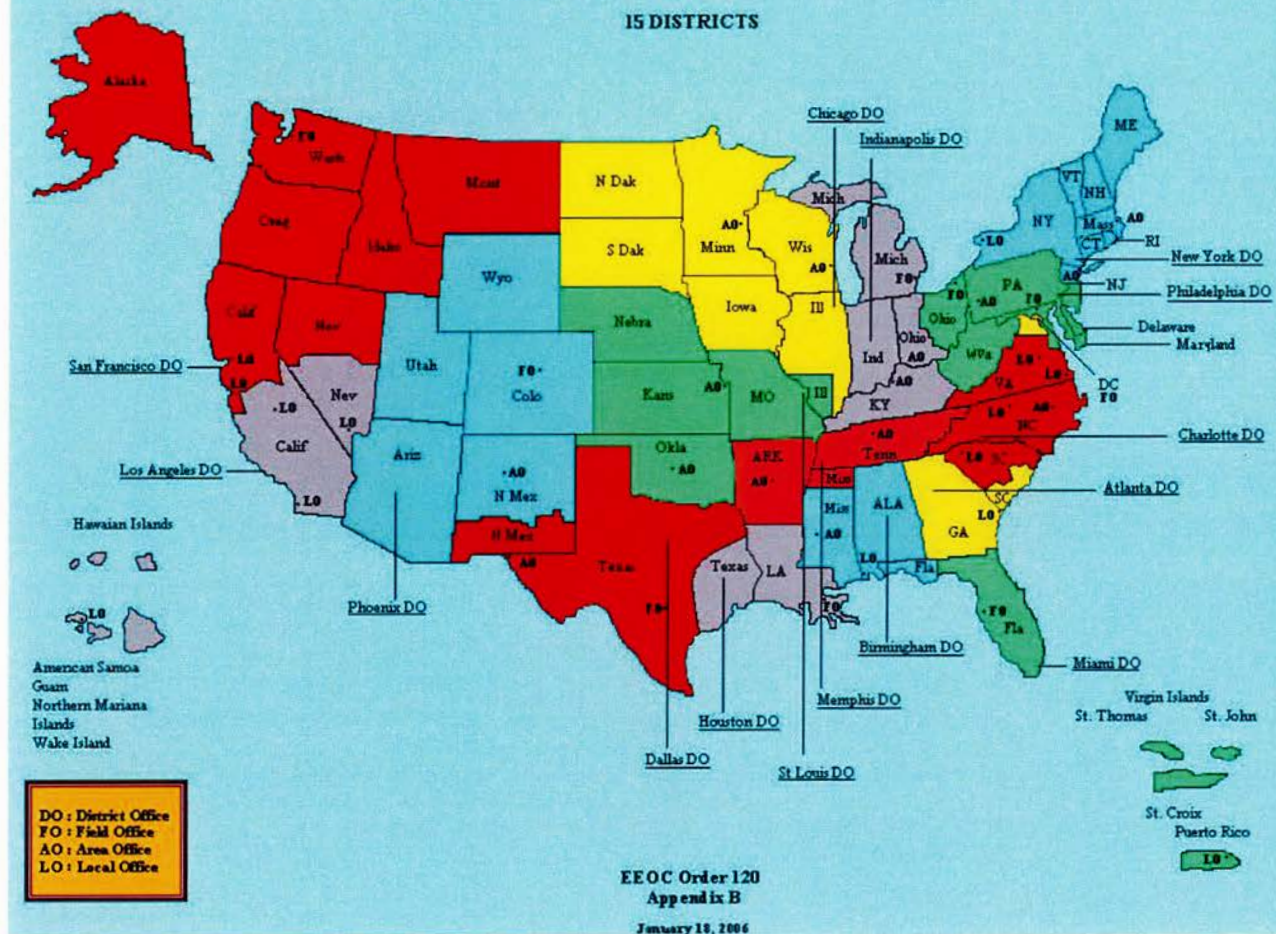
(Harassment Flow Chart)

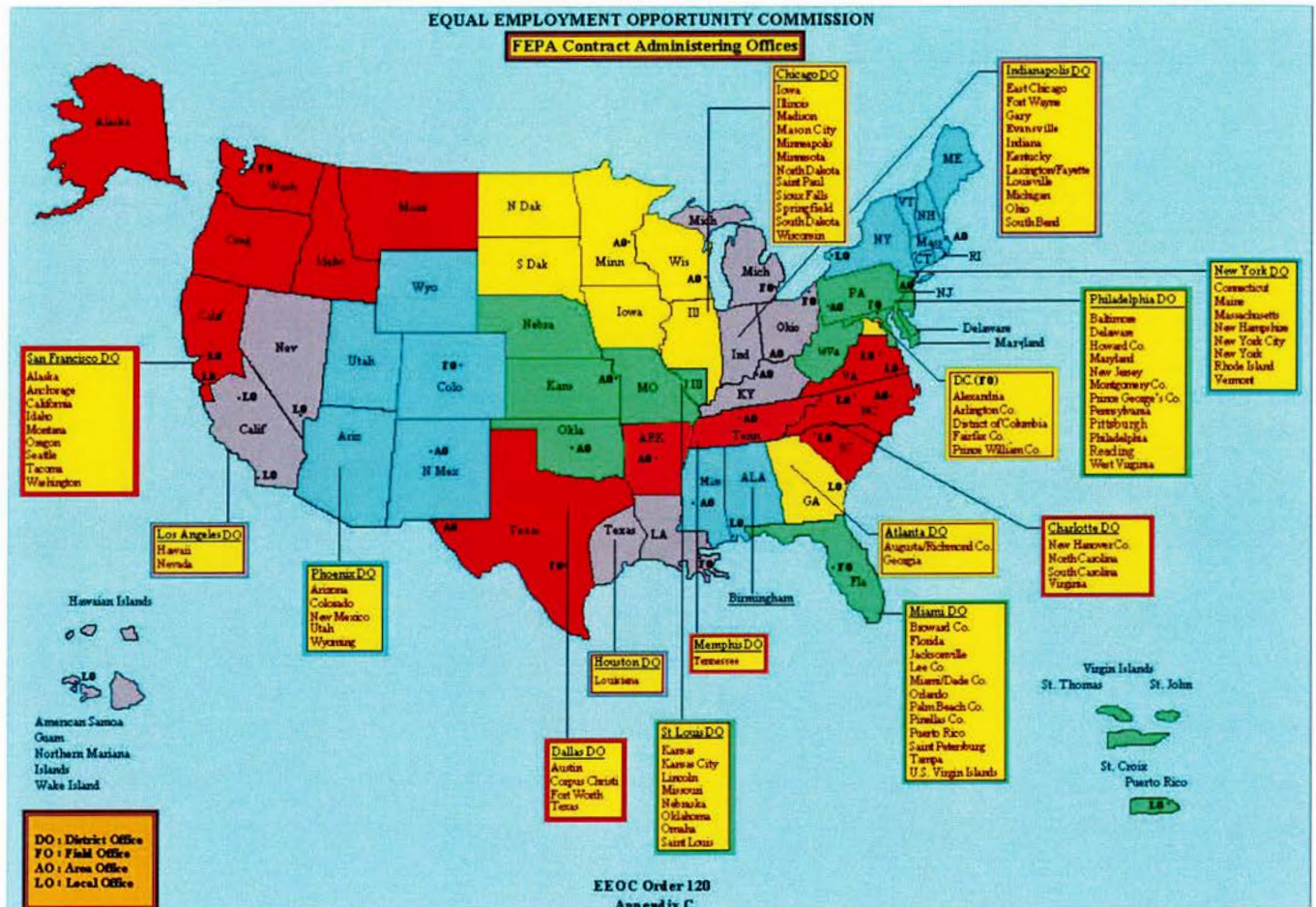


APPENDIX K

(EEOC District Maps)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
15 DISTRICTS





EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NATIONAL TERO MAP



APPENDIX I

(Glossary of Terms)

GLOSSARY OF TERMS

Acquisition Services Division (ASD) - EEOC is responsible for awarding FEPA contracts is upon the EEOC's approval of contract recommendations. ASD provides technical assistance to SLTP for the preparation of the FEPA contract work statement, and other contract provisions. ASD processes all FEPA contract modifications approved during the year.

Certified Acceptance Review (CAR) - Charge resolutions from certified FEPAs that do not require substantial weight reviews are automatically accepted. The EEOC conducts certified acceptance reviews to ensure that the appropriate action(s) has been taken by the FEPAs and reported to EEOC.

Certification Report for Closures- The form by which certified FEPA as report to EEOC their monthly/quarterly resolutions.

Concurrent Charge- A charge that contains allegations of violations of more than one federal anti-discrimination statute for which EEOC has enforcement responsibility.

Contract- In the context of the EEOC/FEPA relationship, a legal agreement by which a FEPA receives a fixed price amount for performing work in processing dual-filed charges to resolution. This agreement also covers FEPA ability to take new charges on behalf of the EEOC.

Contracting Principles- The document containing statements of policy to describe the goals and objectives of the EEOC's SLTP with FEPAs, including contracting eligibility criteria, performance requirements, threshold crediting and payment requirements, and funding parameters.

Deferral- Process by which EEOC sends Title VII charges or concurrent charges to the appropriate FEPA for initial processing. The deferral process is required by statute.

Dual-Filed- Term used to describe the filing of charges that are jurisdictional with both EEOC and a FEPA, without regard to which of the two agencies will initially process the charge. Charges are dual-filed to ensure that charging parties' rights are timely protected under both federal statutes and state or local laws.

Fair Employment Practices Agency- A FEPA that investigates and resolves charges of employment discrimination filed under Title VII, ADA, and/or the ADEA and compatible state law and/or local ordinance in partnership with EEOC.

Federal Acquisition Regulations (FAR) - Regulations that govern EEOC's contractual relationship with FEPAs and a part of the Federal Acquisition Regulations System. The System was established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. Consists of Federal Acquisition regulation (FAR), the primary document, and EEOC's acquisition regulations that implement and/ or supplement the FAR.

Final Action- Final finding or order issued by FEPA which terminates Charging Party's administrative recourse, including the exhaustion of any appeal processes or other avenues of redress or reconsideration.

Interior Business Office (IBC) - this office is in Denver and is responsible for actual payments made to FEPAs for contract charge resolutions and intake service charges. Original vouchers containing FEPA Director's signature and a receiver report prepared at the EEOC District Office level are required prior to payment being disbursed by NBC.

Notice Agencies- Agencies that may not have authority over certain kinds of employment discrimination issues or, if that have such authority, they may not have enforcement power.

Request for Information- A compilation of various statistics and other information regarding a FEPA's case processing record, which is the basis for determining the number of charge resolutions in the FEPA's contract with EEOC.

Review of FEPA Decision- notification given to Charging Party when the FEPA has issued its final action that Charging Party may request a review by EEOC within 15 days of receipt of the final action notice from the FEPA.

State, Local and Tribal Program Coordinator/Manager (SLTPC/M) - A position in the EEOC District Office assigned the day-to-day FEPA contract administration responsibilities. In the handbook references to many of the responsibilities of EEOC District Offices and to staff performing SLTP functions will generally be identified as the responsibilities of the SLTPC/M. Some portions of the state and local functions may at times be assigned by the district director to other staff such as enforcement managers, investigators, investigative support assistants, or others. However, in this document we will describe those functions generally as within the domain of the SLTPC/M. District offices are responsible for contract monitoring.

Substantial Weight Review-The review given to final actions of FEPAs to accord substantial weight to such findings as required by 706 of Title VII of the Civil Rights Act of 1964, as amended.

Substantial Work- Is defined to mean minimal additional investigation or no additional investigation required for EEOC to decide on a charge initially processed by a FEPA.

Three Year Certification Evaluation- Evaluation review to be conducted by EEOC of a FEPA every three years as required by 29 CFR 1601.78(a). Certification evaluations are to provide for the independent evaluation of the FEPA's contract performance over and above the SWR conducted by the district office. The evaluation consists of reviews of FEPA's case files, case management systems, charge receipt systems, charge processing/investigations, post-cause procedures, training, and maintenance of the FEPA/CDS including data input and integrity.

Tribal Employment Rights Offices - TEROs assist the EEOC in carrying out the Commission's responsibilities by ensuring that Native Americans and Alaska Natives know, understand and exercise their rights as they relate to, not only Indian preference requirements on reservations, but also other workplace issues such as harassment and different terms and conditions of employment.

WSA- an agreement negotiated between the EEOC District Office and the FEPA to coordinate the timely processing of dual-filed charges and to prevent duplication of effort.